MONTANA LEGISLATIVE HISTORY

Chapter 268 ~~19~~ 2005

Bill H 643 S _____ Original bill & history ✓ C

H. Committee on	Human Services		S. Committee on	Judiciary	
Hearing Date(s)	2-16	C	Hearing Date(s)	4-5	C
		C			C
		C			C
		C			C
Date Out	3-16	C	Date Out	4-6	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

2/16 HEARING
2/18 TABLED IN COMMITTEE
3/01 MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL

HB 642 INTRODUCED BY GOLIE *LC2007 DRAFTER: EVERTS*

AUTHORIZE LOCAL GOVERNING ENTITIES TO BECOME DEFAULT SUPPLIERS

12/30	FISCAL NOTE NEEDED		
2/10	INTRODUCED		
2/10	FISCAL NOTE REQUESTED		
2/10	REFERRED TO FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS		
2/14	FISCAL NOTE RECEIVED		
2/14	FISCAL NOTE PRINTED		
2/14	HEARING		
2/19	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	9	5
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASS AS AMENDED MOTION FAILED	42	58
3/01	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		

HB 643 INTRODUCED BY DOWELL *LC1392 DRAFTER: NISS*

ELIMINATE SMOKING IN ENCLOSED PUBLIC PLACES

2/10	INTRODUCED		
2/10	FISCAL NOTE REQUESTED		
2/10	REFERRED TO HUMAN SERVICES		
2/16	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
3/17	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	13	3
3/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED AS AMENDED	60	40
3/29	3RD READING PASSED	58	41
	TRANSMITTED TO SENATE		
3/29	REFERRED TO JUDICIARY		
4/05	HEARING		
4/06	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	9	3
4/06	COMMITTEE REPORT—BILL CONCURRED		
4/06	2ND READING CONCURRED	40	10
4/07	3RD READING CONCURRED	40	10
	RETURNED TO HOUSE		
4/08	SENT TO ENROLLING		
4/08	RETURNED FROM ENROLLING		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
4/18	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 268		
	EFFECTIVE DATE: 10/01/2005 - ALL SECTIONS		

HB 644 INTRODUCED BY LANGE *LC1876 DRAFTER: MENZIES*

ALLOW AIRPORT POLICE OFFICERS TO BECOME MEMBERS OF SHERIFFS' RETIREMENT SYSTEM

12/14 FISCAL NOTE NEEDED
2/10 INTRODUCED
2/10 FISCAL NOTE REQUESTED
2/10 REFERRED TO STATE ADMINISTRATION
2/16 HEARING
2/16 FISCAL NOTE RECEIVED
2/17 FISCAL NOTE PRINTED
2/18 TABLED IN COMMITTEE
3/01 MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL

HB 645 INTRODUCED BY CLARK *LC1552 DRAFTER: KURTZ*

REVISE LAWS GOVERNING SPECIAL LICENSE PLATES FOR PERMANENTLY DISABLED PERSONS

2/11 INTRODUCED
2/11 FISCAL NOTE REQUESTED
2/11 REFERRED TO TRANSPORTATION

House BILL NO. 643

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; AND REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-1-220, MCA, is amended to read:

"20-1-220. Use of tobacco product in public school building or on public school property prohibited. (1) An individual may not use a tobacco product in a public school building or on public school property ~~during school hours~~.

(2) Subsection (1) does not apply to the use of a tobacco product:

~~(a)~~ in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

~~(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or~~

~~(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or~~

~~(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district~~.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or pubic school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

Section 2. Section 50-40-102, MCA, is amended to read:

"50-40-102. Intent -- purpose. ~~The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.~~ (1) The legislature finds and declares that:

(a) numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer. The national cancer institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually.

(b) the U.S. department of health and human service's national toxicology program has listed secondhand smoke as a known carcinogen;

(c) a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease;

(d) secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

(e) The Americans With Disabilities Act of 1990, which requires that disabled persons have access to workplaces and public places, considers impaired respiratory function to be a disability;

(f) the U.S. surgeon general has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. The environmental protection agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.

(g) It has been determined by the centers for disease control and prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and the centers for disease control and prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking;

(h) a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25% to 50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

(i) smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke;

(j) numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.

(k) smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.

(2) Accordingly, the legislature finds and declares that the purposes of this part are as follows:

(a) to protect the public health and welfare by prohibiting smoking in public places and places of employment;

(b) to guarantee the right of nonsmokers to breathe smoke-free air; and

(c) to recognize that the need to breathe smoke-free air has priority over the desire to smoke."

Section 3. Section 50-40-103, MCA, is amended to read:

"**50-40-103. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Enclosed public place" means an indoor area, room, or vehicle ~~used by~~ that the general public is allowed to enter or ~~serving~~ that serves as a place of work, including but not limited to the following:

(a) restaurants~~.~~;

(b) stores~~.~~;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

~~educational or~~

(e) health care facilities~~.~~;

(f) auditoriums, arenas, and assembly facilities; ~~and~~

(g) meeting rooms open to the public;

(h) bars and taverns;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Place of work" means an enclosed room where ~~more than~~ one ~~employee~~ or more individuals ~~works~~ work.

(6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

~~(7) "Smoking area" means a designated area in which smoking is permitted.~~"

Section 4. Section 50-40-104, MCA, is amended to read:

"50-40-104. ~~Designation or reservation of smoking or nonsmoking areas -- notice~~ Smoking in enclosed public places prohibited -- notice to public -- places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

~~(1) The proprietor or manager of an enclosed public place shall:~~

~~(a) designate nonsmoking areas with easily readable signs;~~

~~(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;~~

~~(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or~~

~~(d) designate and reserve the entire area as a nonsmoking area.~~

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, ~~whether or not areas within the establishment have been reserved for nonsmokers~~ that smoking in the enclosed public place is prohibited.

~~(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.~~

~~(4)~~(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

(a) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

(b) a private motor vehicle;

(c) school property in which smoking is allowed pursuant to the exception in 20-1-220;

(d) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 20% of the rooms available to rent to guests may be designated as smoking rooms;

(e) a private or semiprivate room in a long-term care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5, that is occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted and from which smoke does not infiltrate to other parts of the facility where smoking is prohibited pursuant to this part; and

(f) a room or other space used for bona fide, traditional, American Indian ceremonial purposes in connection with the practice of a traditional Indian religion."

Section 5. Section 50-40-108, MCA, is amended to read:

"50-40-108. Enforcement. The provisions of this part ~~shall~~ must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department."

Section 6. Section 50-40-201, MCA, is amended to read:

"50-40-201. ~~Reservation of smoking and nonsmoking areas in work areas in local~~ Local government buildings -- smoking prohibited. (1) In ~~offices and work areas in~~ all parts of buildings maintained by a political subdivision, ~~except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.~~

~~(2) The governing body of a political subdivision may designate any building maintained by it as smoke-free~~ smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the

building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions ~~authorized by~~ contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

NEW SECTION. **Section 7. Part not preemptive of stricter ordinance.** The provisions of this part do not preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation.

NEW SECTION. **Section 8. Rulemaking required.** The department shall adopt rules to implement this part.

NEW SECTION. **Section 9. Repealer.** Sections 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, and 50-40-207, MCA, are repealed.

NEW SECTION. **Section 10. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 11. Codification instruction.** [Sections 7 and 8] are intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to [sections 7 and 8].

NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

FISCAL NOTE

Bill #: HB0643 **Title:** Eliminate smoking in enclosed public places

Primary Sponsor: Dowell, T. **Status:** As Introduced

Dowell (for Gov Budget) 2/17
Sponsor signature Date

D Ewer 2/16/05
David Ewer, Budget Director Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
State Special Revenue	$293,716	$108,300
Revenue:		
State Special Revenue	$0	$0
Net Impact on General Fund Balance:	$0	$0

☐	Significant Local Gov. Impact	☒	Technical Concerns
☒	Included in the Executive Budget	☐	Significant Long-Term Impacts
☐	Dedicated Revenue Form Attached	☐	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. The Department of Public Health and Human Services (DPHHS) assumes school officials will enforce tobacco prohibition in public schools or on public school property.
2. The bill does not address an effective date of legislation, other than for political subdivisions. Therefore DPHHS assumes an effective date of October 1, 2005.
3. The department assumes enactment of this bill will require the department to implement three phases for compliance:
   a. Education for all enclosed public establishments in the State.
      i. The department assumes initial public education will begin July 1, 2005 through September 30, 2005, prior to legislation taking effect.
      ii. The department assumes education will include informational packets for distribution to establishments as well as a media campaign to inform the general public of this legislation.
   b. Compliance of this act prohibiting smoking in all enclosed public establishments.
      i. The department assumes this phase will begin on October 1, 2005.
      ii. The department will have a dedicated toll-free telephone line for public use to register complaints of violations for department follow-up. Reported complaints are assumed to significantly reduce after the first twelve months of enactment of this legislation.

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iii. Local county health board sanitarians or departmental designees will fill-out an observation form during their annual inspection of enclosed public places, primarily restaurants, gaming establishments or taverns and bars, to report non-compliance to the department for departmental follow-up.

c. Enforcement of this act prohibiting smoking in all enclosed public establishments.
   i. The department assumes the first violation will result in mailing the establishment the information packet with a cautionary letter from the department.
   ii. The department assumes the second violation will result in an educational visit to the establishment by the community tobacco contractor or departmental designee, who will report back to the department.
   iii. Assumptions for further violations cannot be determined at this time. (See technical note #2)

4. Signage will be provided in accordance with section 4 part 2 to the proprietor or manager of the qualifying establishment, and section 4 part 3 to the proprietor or manager of an intrastate bus that is not chartered. Signage will be included in the informational packets that will be distributed.
5. Operating costs are estimated at $294,366 for FY 2006 and include the following:
   a. Dedicated toll-free telephone line $500 to be managed by contract employee as well as current staff.
   b. Contract employee services are estimated at $13,520 (1,040 hrs x $13/hr) to assist with the mass mailing, and answer enforcement calls.
   c. Office equipment package $1,793.
   d. Computer package $1,203.
   e. Rent and supplies $1,750.
   f. Long distance phone $600.
   g. Printing and graphics for information packets $50,000
   h. Mailing of information packet $25,000.
   i. Media education campaign $200,000.
   j. Legal costs for administrative rule writing cannot be estimated. (See technical note #4)
6. Operating costs are estimated at $108,300 for FY 2007 and include the following:
   a. Dedicated toll-free telephone line $500 to be managed by current tobacco prevention staff.
   b. Long distance phone $300.
   c. Printing and graphics for information packets $5,000.
   d. Mailing of information packet $2,500.
   e. Media education campaign $100,000.
7. It is assumed that the costs associated with this bill will be supported with state special revenue.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
Operating Expenses	$294,366	$108,300
Funding of Expenditures:		
State Special Revenue (02)	$294,366	$108,300
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
State Special Revenue (02)	($294,366)	($108,300)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The fiscal impact on local governments (political subdivisions) cannot readily be determined.

TECHNICAL NOTES:

1. The estimated costs of the activities in the above assumptions would be covered under the current proposed executive budget in the tobacco prevention program.
2. Section 5 requires DPHHS and local boards of health to enforce the smoking restrictions. The bill itself does not specify the nature of that enforcement. However, Section 50-1-103, MCA, empowers both county attorneys and the department to bring an enforcement action in court to enjoin a violation of public health laws, those contained in HB 643 included. Monetary penalties are not authorized under the bill; the current penalty provision in 50-40-109 is to be repealed.
3. The bill, because it does not have a special effective date, will take effect October 1, 2005. While Section 4 prohibits smoking in almost every enclosed public place, effective October 1, 2005, Section 6 defers the requirement for buildings owned by a political subdivision until January 1, 2006, and until July 1, 2006, for buildings leased and occupied by political subdivisions.
4. Section 8 requires DPHHS to adopt rules but contains no directives about the nature of those rules. It is unclear what rules would be necessary to implement the provisions of the bill.
5. This bill does not consider the competency of long-term care residents in nursing facilities who may be allowed to smoke in their bedrooms. There are 100 nursing homes with 7,533 beds.
6. Section 4 section 50-40-104 MCA (e) in its current amended state conflicts and/or will be impacted by federal Life Safety Code (LSC) requirements and standards. Compliance with the LSC is needed for long term care facilities to participate in the Medicare/Medicaid Program. Lack of compliance can result in sanctions by CMS (Centers for Medicare/Medicaid Services). These sanctions can result in negative financial impact and/or facility termination from the program.

FISCAL NOTE

Bill #: HB0643 **Title:** Eliminate smoking in enclosed public places

Primary Sponsor: Dowell, T. **Status:** As Amended in House Committee

Sponsor signature 4/20/05 Date

David Ewer, Budget Director 4/19/05 Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
State Special Revenue	$293,716	$108,300
Revenue:		
General Fund	($124,476)	($240,157)
State Special Revenue	($445,890)	($400,646)
Net Impact on General Fund Balance:	($124,476)	($240,157)

☐	Significant Local Gov. Impact	☒	Technical Concerns
☒	Included in the Executive Budget	☐	Significant Long-Term Impacts
☐	Dedicated Revenue Form Attached	☐	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. HB 643 prohibits smoking in all public schools and in all places where the public is free to enter. The proposal excludes bars from the provisions of the bill until September 30, 2009.

Revenue

2. It is anticipated that smoking will decline slightly under the proposal. It is unknown to what extent smoking will decline, but for purposes of this fiscal note a reduction of three-quarters of one percent, or -0.75% is used to project cigarette consumption and the associated cigarette tax revenue decrease.
3. Under I-149, total cigarette tax collections, less tribal revenue sharing is projected at $73.6 million in FY 2006, and $71.0 million in FY 2007.
4. The proposal does not have an effective date, and therefore is effective October 1, 2005. However, the proposal is specific that buildings owned or occupied by a political subdivision must be smoke-free by no later than July 1, 2006. For purposes of this fiscal note, FY 2006 revenue impacts are projected at one-half (50%) of a full years impact.
5. Total cigarette tax revenue is projected to decrease by $276,000 ($73.6 million x 0.75% x 50% half year) in FY 2006, and $532,500 ($71.0 x 0.75%) in FY 2006.
6. The general fund receives 45.1% of total cigarette tax collections, and would see an estimated reduction of $124,476 ($276,000 x 45.1%) in FY 2006, and $240,157 ($532,500 x 45.1%) in FY 2007.

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7. State special revenue accounts receive the following percentages of cigarette revenues, and the associated estimated loss in revenue:
    - 2.6% to Long-Range Building, estimated reduction of $7,176 ($276,000 x 2.6%) in FY 2006, and $13,845 ($532,500 x 2.6%) in FY 2007.
    - 8.3% to DPHHS for Veterans' Homes, estimated reduction of $22,908 ($276,000 x 8.3 %) in FY 2006, and $44,198 ($532,500 x 8.3%) in FY 2007.
    - 44.0% to Health and Medicaid Initiatives, estimated reduction of $121,440 ($276,000 x 44 %) in FY 2006, and $234,300 ($532,500 x 44%) in FY 2007.

Expenditures

8. The Department of Public Health and Human Services (DPHHS) assumes school officials will enforce tobacco prohibition in public schools or on public school property.
9. The bill does not address an effective date of legislation, other than for political subdivisions. Therefore DPHHS assumes an effective date of October 1, 2005.
10. The department assumes enactment of this bill will require the department to implement three phases for compliance:
    a. Education for all enclosed public establishments in the State.
        i. The department assumes initial public education will begin July 1, 2005 through September 30, 2005, prior to legislation taking effect.
        ii. The department assumes education will include informational packets for distribution to establishments as well as a media campaign to inform the general public of this legislation.
    b. Compliance of this act prohibiting smoking in all enclosed public establishments.
        i. The department assumes this phase will begin on October 1, 2005.
        ii. The department will have a dedicated toll-free telephone line for public use to register complaints of violations for department follow-up. Reported complaints are assumed to significantly reduce after the first twelve months of enactment of this legislation.
        iii. Local county health board sanitarians or departmental designees will fill-out an observation form during their annual inspection of enclosed public places, primarily restaurants, gaming establishments or taverns and bars, to report non-compliance to the department for departmental follow-up.
    c. Enforcement of this act prohibiting smoking in all enclosed public establishments.
        i. The department assumes the first violation will result in mailing the establishment the information packet with a cautionary letter from the department.
        ii. The department assumes the second violation will result in an educational visit to the establishment by the community tobacco contractor or departmental designee, who will report back to the department.
        iii. Assumptions for further violations cannot be determined at this time. (See technical note #2)
11. Signage will be provided in accordance with section 4 part 2 to the proprietor or manager of the qualifying establishment, and section 4 part 3 to the proprietor or manager of an intrastate bus that is not chartered. Signage will be included in the informational packets that will be distributed.
12. Operating costs are estimated at $294,366 for FY 2006 and include the following:
    a. Dedicated toll-free telephone line $500 to be managed by contract employee as well as current staff.
    b. Contract employee services are estimated at $13,520 (1,040 hrs x $13/hr) to assist with the mass mailing, and answer enforcement calls.
    c. Office equipment package $1,793.

d. Computer package $1,203.
e. Rent and supplies $1,750.
f. Long distance phone $600.
g. Printing and graphics for information packets $50,000
h. Mailing of information packet $25,000.
i. Media education campaign $200,000.
j. Legal costs for administrative rule writing cannot be estimated. (See technical note #4)

13. Operating costs are estimated at $108,300 for FY 2007 and include the following:
    a. Dedicated toll-free telephone line $500 to be managed by current tobacco prevention staff.
    b. Long distance phone $300.
    c. Printing and graphics for information packets $5,000.
    d. Mailing of information packet $2,500.
    e. Media education campaign $100,000.
14. It is assumed that the costs associated with this bill will be supported with state special revenue.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
Operating Expenses	$294,366	$108,300
Funding of Expenditures:		
State Special Revenue (02)	$294,366	$108,300
Revenue		
General Fund (01)	($124,476)	($240,157)
State Special Revenue (02)	($151,524)	($292,346)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund (01)	($124,476)	($240,000)
State Special Revenue (02)	($445,890)	($400,646)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The fiscal impact on local governments (political subdivisions) cannot readily be determined.

TECHNICAL NOTES:
1. The estimated costs of the activities in the above assumptions would be covered under the current proposed executive budget in the tobacco prevention program.
2. Section 5 requires DPHHS and local boards of health to enforce the smoking restrictions. The bill itself does not specify the nature of that enforcement. However, Section 50-1-103, MCA, empowers both county attorneys and the department to bring an enforcement action in court to enjoin a violation of public health laws, those contained in HB 643 included. Monetary penalties are not authorized under the bill; the current penalty provision in 50-40-109 is to be repealed.

3. The bill, because it does not have a special effective date, will take effect October 1, 2005. While Section 4 prohibits smoking in almost every enclosed public place, effective October 1, 2005, Section 6 defers the requirement for buildings owned by a political subdivision until January 1, 2006, and until July 1, 2006, for buildings leased and occupied by political subdivisions.
4. Section 8 requires DPHHS to adopt rules but contains no directives about the nature of those rules. It is unclear what rules would be necessary to implement the provisions of the bill.
5. This bill does not consider the competency of long-term care residents in nursing facilities who may be allowed to smoke in their bedrooms. There are 100 nursing homes with 7,533 beds.
6. Section 4 section 50-40-104 MCA (e) in its current amended state conflicts and/or will be impacted by federal Life Safety Code (LSC) requirements and standards. Compliance with the LSC is needed for long term care facilities to participate in the Medicare/Medicaid Program. Lack of compliance can result in sanctions by CMS (Centers for Medicare/Medicaid Services). These sanctions can result in negative financial impact and/or facility termination from the program.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on February 16, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 619, 2/12/2005; HB 643, 2/12/2005
HB 648, 2/12/2005; HB 658, 2/12/2005
HB 690, 2/12/2005

Executive Action:

Gloria Hermanson, Montana Society of Ambulatory Surgery Centers, opposed HB 658 for most of the same reasons listed by Mr. Olson.

Informational Testimony: None

Questions from Committee Members and Responses:

REP. ART NOONAN asked about the number of hits on the Association's website. **Mr. Olson** replied that the numbers are very low.

Closing by Sponsor:

The Sponsor closed.
{Tape: 2; Side: B; Approx. Time Counter: 26.7 - 31}

HEARING ON HB 643

Sponsor: REP. TIM DOWELL, HD 8, KALISPELL

Opening Statement by Sponsor:

REP. TIM DOWELL opened the hearing on **HB 643** which would eliminate smoking in enclosed public places. He read some of his opening statements from the Montana Constitution, Article II, Section 3, under the declaration of rights. He stated that tobacco has been known to be harmful but the public had heard for years that secondhand smoke wasn't. He likened it to the Grace indictment and read part of an article on that.
{Tape: 3; Side: A; Approx. Time Counter: 0 - 6.2}

Proponents' Testimony:

REP. JOHN WARD, HD 84 spoke in strong support of HB 643. Many businesses are already smoke free. Economic harm has been proven to be false. He mentioned that Ireland had become smoke free and they were not experiencing economic harm.
{Tape: 3; Side: A; Approx. Time Counter: 6.2 - 9.5}

Dr. Robert Shepard, Medical Director, New West Health Services, Helena, submitted a letter from Dr. Thomas Purcell, Medical Director of the Deaconess Billings Clinic Cancer Center in Billings, who supported this legislation. He then gave an overview of a study conducted by himself and Dr. Richard Sargent.

This study was published in the British Medical Journal. He submitted his testimony and the study.
EXHIBIT(huh38a08)
EXHIBIT(huh38a09)
{Tape: 3; Side: A; Approx. Time Counter: 9.5 - 19}

Laura Fox, Representing Herself, Missoula, gave her testimony and submitted her written testimony and a picture of her husband, Dan, who died at age 46 from secondhand smoke.
EXHIBIT(huh38a10)
EXHIBIT(huh38a11)
{Tape: 3; Side: A; Approx. Time Counter: 19 - 22}

Verner Bertelsen, Representing Himself, Helena, asked the Committee to support HB 643 because it is the right thing to do.
{Tape: 3; Side: A; Approx. Time Counter: 22 - 23.3}

Tyler Steinebach, President, Sophomore Class, Superior High School, Superior, stood in strong support of the bill. He was going to do everything he could to keep other kids from smoking and do what he could to make public places smoke free.
{Tape: 3; Side: A; Approx. Time Counter: 23.3 - 25.5}

Joy Bruck, Volunteer Advocate, AARP Montana, submitted her written testimony.
EXHIBIT(huh38a12)
{Tape: 3; Side: A; Approx. Time Counter: 25.5 - 26.6}

Reverend Bob Holmes, Representing Himself, stood in support of HB 643 and said, "It did not violate property rights because we are not suppose to let someone else commit suicide."
{Tape: 3; Side: A; Approx. Time Counter: 26.6 - 28.6}

Dr. Jane Horton, Range Science, understood the issues very well and stood in strong support of HB 643. She had been exposed to secondhand smoke as a musician playing in bars and had bone cancer.
{Tape: 3; Side: A; Approx. Time Counter: 28.6 - 31}

James Schultz, Science Teacher, Middle and High School, was excited that this bill had finally come forward. He has three passions: students, music and making sure the world is rid of cigarettes. He urged the Committee to pass the bill.
{Tape: 3; Side: B; Approx. Time Counter: 0 - 1.7}

Linda Stoll, Montana Local Health Officers Group, submitted a letter from Jani McCall, Deaconess Billings Clinic. She then submitted six letters of support from her group: Gallatin

County, Missoula County, Flathead County, Yellowstone County, Cascade County, and Lewis and Clark County.
EXHIBIT(huh38a13)
EXHIBIT(huh38a14)
{Tape: 3; Side: B; Approx. Time Counter: 1.7 - 3.1}

Dr. Richard Sargent, Helena, submitted his written testimony and two charts.
EXHIBIT(huh38a15)
{Tape: 3; Side: B; Approx. Time Counter: 3.1 - 13.3}

Cliff Christian, American Heart Association, concurred with the above proponents.
{Tape: 3; Side: B; Approx. Time Counter: 13.3 - 15.4}

The following are supporters who gave their names. Some had exhibits.

David Nimick, Helena

Lora Wier, Choteau
EXHIBIT(huh38a16)

Florence Anderson, Choteau
EXHIBIT(huh38a17)
EXHIBIT(huh38a18)

Nancy Semenza, Helena
EXHIBIT(huh38a19)

Orrin Tiberi, High School Senior, Helena
EXHIBIT(huh38a20)
EXHIBIT(huh38a21)

Linda Lee, Missoula
EXHIBIT(huh38a22)

Jim Aherns, Chairman, Alliance for a Healthy Montana and President, Montana Hospital Association

Beda Lovitt, Montana Medical Association

Mary McCue, Montana Dental Association

Christa Nye, American Cancer Society
{Tape: 3; Side: B; Approx. Time Counter: 15.4 - 23.4}

Opponents' Testimony: None

Informational Testimony:

Lori NewBreast, Blackfeet Tribe, spoke on the exemptions in HB 643. She was concerned about Section IV, Subsection 4(f). She handed in her testimony and supporting exhibits.
EXHIBIT(huh38a23)

Tom Harwell, MPH, Chief, Chronic Disease Prevention and Health Promotion Bureau, Montana Department of Public Health and Services (DPHHS), submitted his testimony with suggested amendments.
EXHIBIT(huh38a24)
{Tape: 3; Side: B; Approx. Time Counter: 23.4 - 32}

Questions from Committee Members and Responses:

REP. MCALPIN asked Dr. Sargent how difficult it is to be published in the British Medical Journal. **Dr. Sargent** explained there are four top journals in the world of which the British Medical Journal is one.
{Tape: 4; Side: A; Approx. Time Counter: 0 - 0.3}

REP. ROBERTS inquired about a person who had been exposed to secondhand smoke for thirty minutes. **Dr. Sargent** replied that amount of exposure would give a person about the same physiological effects as smoking one or two cigarettes.

REP. ROBERTS asked if, after surgery, there is a difference in the healing process between a smoker and a non-smoker. **Dr. Sargent** explained that healing is much faster in a non-smoking person and he went on to say that it didn't matter whether it was first or secondhand smoke.
{Tape: 4; Side: A; Approx. Time Counter: 0.3 - 3.1}

REP. WAGMAN wanted to know if the sponsor would object to amending out all "whereas" statements in the bill. **REP. DOWELL** felt they were important in explaining the bill.
{Tape: 4; Side: A; Approx. Time Counter: 4.2 - 5}

REP. WINDY BOY asked if the suggested amendment was sufficient. **Ms. NewBreast** felt that it would be fine. ***{Tape: 4; Side: A; Approx. Time Counter: 5 - 6.9}***

REP. EATON inquired if the sponsor had coordinated the witnesses. **REP. DOWELL** answered that he had not. They came on their own.

REP. HENDRICK thanked his students who had come from Superior to testify.
{Tape: 4; Side: A; Approx. Time Counter: 6.9 - 9.2}

REP. MCGILLVRAY inquired about the economic impact on businesses in surrounding states who had a smoking ban. **Dr. Sargent** had data on large communities like San Luis Obispo, California. In a study, smoking bars had to ban smoking to stay in competition with non-smoking bars.
{Tape: 4; Side: A; Approx. Time Counter: 9.2 - 11.4}

REP. MCGILLVRAY asked about damages brought about by alcohol and smoking. **Dr. Shepard** said that the number one preventable cause of death is cigarette smoking. The second one is alcohol. The third one is secondhand smoke. Alcohol has one distinction: you can drink and not be damaged. Two to three drinks a day will not harm a person and can be a health benefit. The major struggle with alcohol is drinking and driving, and society is working hard to say 'no' to drinking and driving.
{Tape: 4; Side: A; Approx. Time Counter: 11.4 - 15}

REP. MILBURN asked for a more definitive answer concerning two to three drinks a day with students sitting in the audience. **Dr. Shepard** said he did not mean to make a statement in favor of alcohol. Alcohol and underage drinking is a big problem. More than three drinks a day is not good.
{Tape: 4; Side: A; Approx. Time Counter: 15 - 18.4}

REP. WARDEN inquired about 20% of motel/hotel rooms being allowed for smokers and wondered if that was typical in other states. **Mr. Christian** as a member of the Montana Innkeepers Association said he had far fewer than 20% in his motel. The averages in Montana are from 15-20%. There are some concerns in Great Falls. They have older hotels and are probably going to ask for an amendment in that area.
{Tape: 4; Side: A; Approx. Time Counter: 18.4 - 21.2}

Closing by Sponsor:

REP. DOWELL was impressed by the fact of no opponents. But he knew there would be opposition to his bill. He handed out an article from the New York Times telling about the smoking ban in New York City. There had been no economic impact at all. He spoke again about R. W. Grace and handed out a page on the court decision, specifically Number 186.
EXHIBIT(huh38a25)
EXHIBIT(huh38a26)
{Tape: 4; Side: A; Approx. Time Counter: 21.2 - 32}

HOUSE OF REPRESENTATIVES
Roll Call
HUMAN SERVICES COMMITTEE

DATE 2-16-05

NAME	PRESENT	ABSENT	EXCUSED
REP. ARLENE BECKER, CHAIR	X		
REP. TOM FACEY, VICE CHAIR	X		
REP. DON ROBERTS, VICE CHAIR	X		
REP. MARY CAFERRO	X		
REP. EMELIE EATON	X		
REP. GORDON HENDRICK	X		
REP. TERESA HENRY	X		
REP. WILLIAM JONES	X		
REP. DAVE McALPIN	X		
REP. TOM McGILLVRAY	X		
REP. MIKE MILBURN	X		
REP. ART NOONAN	X		
REP. RON STOKER	X		
REP. PAT WAGMAN	X		
REP. BILL WARDEN	X		
REP. JONATHAN WINDY BOY	X		

Montana House of Representatives
Visitors Register

HUMAN SERVICES COMMITTEE **Date** 2-16-05

Bill No. HB-643 **Sponsor(s)** Rep T. Dowell

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Christine Deveny	Self	✓		
Lori NewBreast	Blackfeet Tribe			✓
Debbie Goodyear	Self	✓		
Jane Johnson	Self	✓		
Laura Fox (Laura Fox)	Self	✓		
Todd Harwell	DPHHS			✓
Linda Lee	Self	✓		
Pat Nichols	Self none	✓		
Tyler Steinbach	Self	✓		
Kathleen Daugherty	MT Nurses Assn	✓		
Mary McCue	MT Dental Assn	✓		
Lora Wier	MT Public Health Assoc	✓		
Jane McCall	OBC, MCI	✓		
Jeri Domme	MT ♡	✓		
Jeff Christian	Am Heart Assn	✓		
Dick Paulson	Am Lung Assn No Position	✓		
Claudia Clifford	AARP	✓		
Jane Horton	citizen	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/HumServVisitorReg.sample2003

Montana House of Representatives
Visitors Register

HUMAN SERVICES COMMITTEE **Date** 2-16-05

Bill No. HB 643 **Sponsor(s)** Rep T Dowell

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Verner Bertelsen	S & I	✓		
Dan Haffey	self	✓		
Kay Brueck	AARP MT	✓		
Florence Anderson	Chateau Coalition	✓		
Nancy Kenney	Chateau " "			
David Nimick	self	✓		
Tom McCall	DOC MCI	✓		
William Holmes	Self		✓	
Peter Jones	Self	✓		
Samantha Donaldson	Self	✓		
James Schulz	self	✓		
Orrin Tiberi	self	✓		
Kelley Morad	Self	✓		
Vicky Tiberi	self	✓		
Lauren Watkins	self	✓		
Tess Baker	Self	✓		
Deda Levitt	Mt Med Assn	✓		
Kristen Nei	ACS	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/HumServVisitorReg.sample2003

Montana House of Representatives
Visitors Register

HUMAN SERVICES COMMITTEE **Date** 2-16-05

Bill No. HB-643 **Sponsor(s)** Rep T Dowell

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Robert Shepard 130 Pill	Self & New West	✓		
TANE Horton	citizen	✓		
Richard Sargent	Self.	✓		
Lois Fitzpatrick	Self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/HumServVisitorReg.sample2003

Montana House of Representatives
Visitors Register

HUMAN SERVICES **COMMITTEE** **Date** 2-16-05

Bill No. HB 643 **Sponsor(s)** Rept T. Dowell

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
BOB LEKANS / HOLONA	SWAT	X		
C.B. PEARSON	PMK	X		
Jim Mott	Self, American Cancer			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.
/s/CommVisitorReg.sample2003

DEACONESS BILLINGS CLINIC

EXHIBIT 8
DATE 2-16-05
HB 643

February 16, 2005

Representative Arlene Becker
Chair – Human Services Committee
Montana House of Representatives
P.O. Box 200400
Helena, MT 59620-0400

Madam Chair and Members of the House Human Services Committee:

This letter is to lend my support for HB 643 supporting Montana tobacco-free schools and smoke-free public places.

I am a medical oncologist and director of the Deaconess Billings Clinic Cancer Center in Billings, Montana. I have the privilege of taking care of many patients with cancer. Much of the burden of their cancer is related to smoking, either from their own individual smoking or second-hand smoke. There is no doubt in my mind that abolishing smoke in public places and continuing to educate our children will lead to a healthier America with less burden of cancer and other diseases.

I believe it is anyone's right to smoke. That's certainly not what I would like to legislate, but I certainly would legislate affecting others with their smoking, which is causing death every day across the United States.

Thank you very much for your consideration of this. Lives depend on your decision.

Sincerely,

W. Thomas Purcell, M.D.
Chair, Department of Hematology/Oncology
Director, Deaconess Billings Clinic Cancer Center

klg
02/16/2005 6:37 A
02/16/2005 8:10 A

EXHIBIT 9
DATE 2-16-05
HB 643

Testimony Montana Legislature
Second Hand Smoke

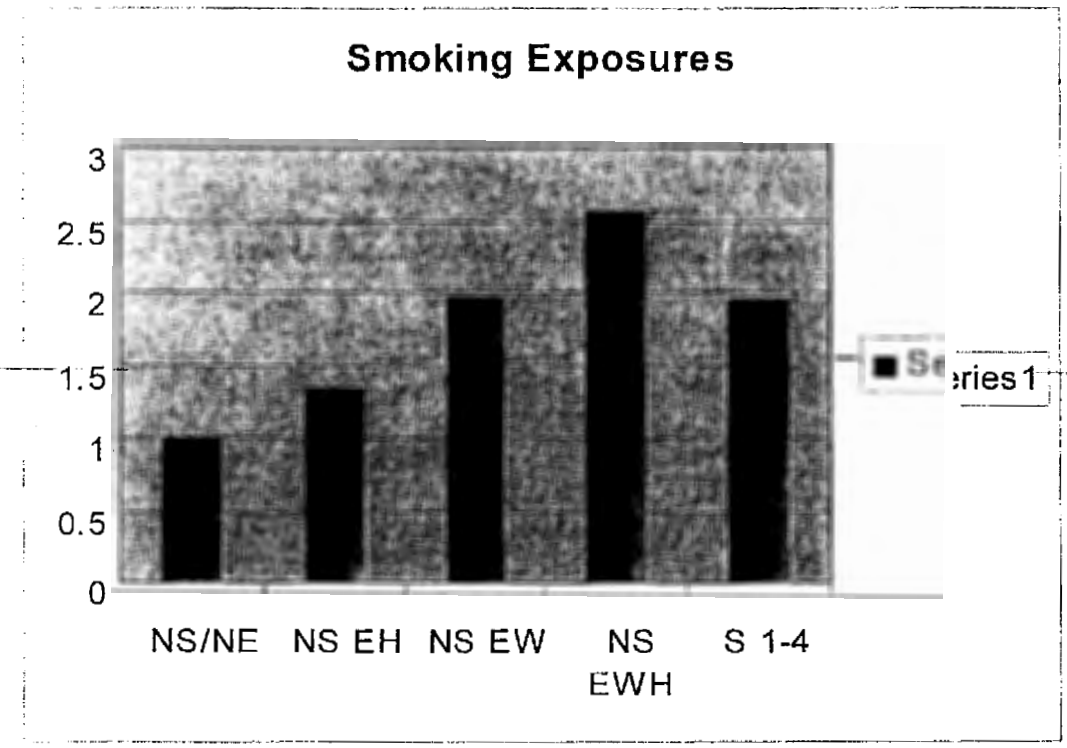
Let me thank all of you for your time today. I appreciate the opportunity to discuss this major public health issue – Second Hand Smoke. The study conducted by my partner and I and published in the British Medical Journal has generated a lot of interest and, most fun of all, a lot of controversy.

I hope, in the few minutes I have today, to show you not only why the results we found are plausible, but actually why they should have been expected. Indeed, it would have been more surprising if we had found nothing.

Starting in early 1990, many studies were done that showed individuals exposed to second hand smoke had a higher risk of heart attacks than people not exposed. This is the same type of data as the recent studies on Vioxx. People who took Vioxx had a higher risk of heart attacks than did people who did not. People exposed to second hand smoke have a higher risk of heart attacks than people not exposed. What does this mean?

Take a sample group of 1000 people and assume that none of them are exposed to second hand smoke. This group will have a certain number of heart attacks, say 100. Now take a second group of people, identical to the first except for the one issue we are measuring (either Vioxx or second hand smoke) and count the number of heart attacks in the second group. Let's say the second group has 130 heart attacks. We can now say the second group has an increased risk of 30%. We also express this as a relative risk of 1.3. There are over 50 studies in the medical literature that document an increased risk of heart attack with exposure to second hand smoke. Let's look at one. (Pitsavos C, et al Tob Control 2002 Sep; 11(3):220-5)

This study divided people into 4 groups. All groups were 100% non-smokers. The first group has no second hand smoke exposure anywhere. The second group is exposed only at home, the third only at work and the fourth at both home and work. The risk for each group is shown in the attached graph. (NS/NE = Non-smoker Not-exposed, NS EH = Non-smoker Exposed at Home, NS EW = Non-smoker exposed at work, NS EW = Non-smoke exposed at work and at home. For reference, a study of light smokers (1-4 cigarettes per day is also included.)



Note that if you exposed your spouse to your cigarette smoking, your spouse has an increased risk of heart attacks of 30%. Note also, that people exposed at work have almost twice the risk of a heart attack as people who are not exposed at work.

This shows the consistent finding from all studies that exposure to second hand smoke is associated with increased risk. Note also, that the greater the exposure, the higher the risk. This is a dose response curve. Whenever we find a "dose response curve", the probably that the factor looked at is causative is increased.

Now we can ask the rhetorical question: "If second hand smoke is the causative factor, would removing the second hand smoke reduce the risk?" The importance of our study is that it was the first time this question had been asked.

Whenever scientists find an association like this, the next question asked is "What are the mechanisms? How does cigarette smoke, whether first hand or second hand, cause heart disease?"

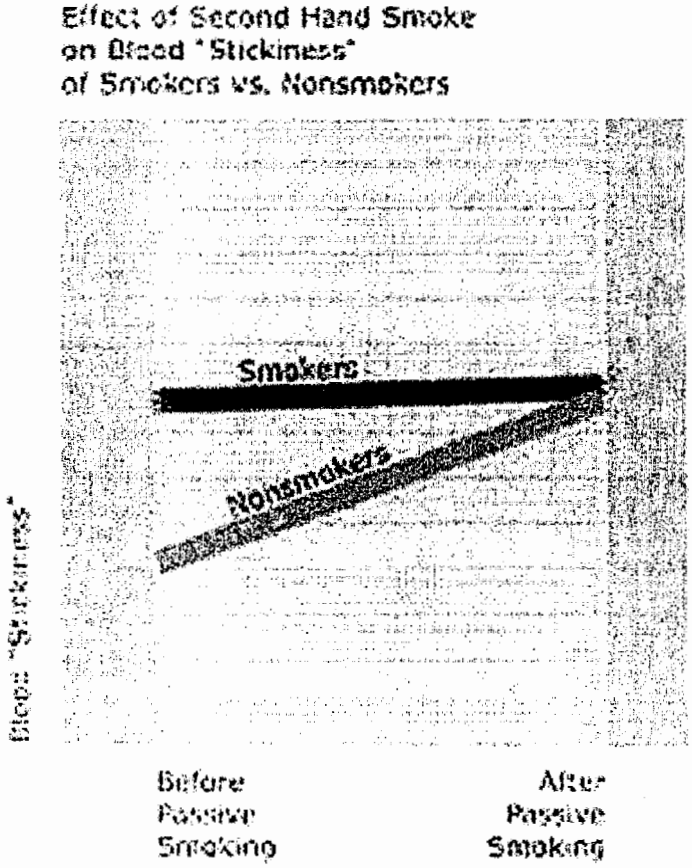
Let me give you a brief high level overview of the answer. All of the answers are laboratory proven. These experiments have actually been done on people and animals. This is not "statistics".

First, let me review the mechanisms of heart attacks. There are three different processes that can occur, either alone or together, to cause a heart attack. First, you can have

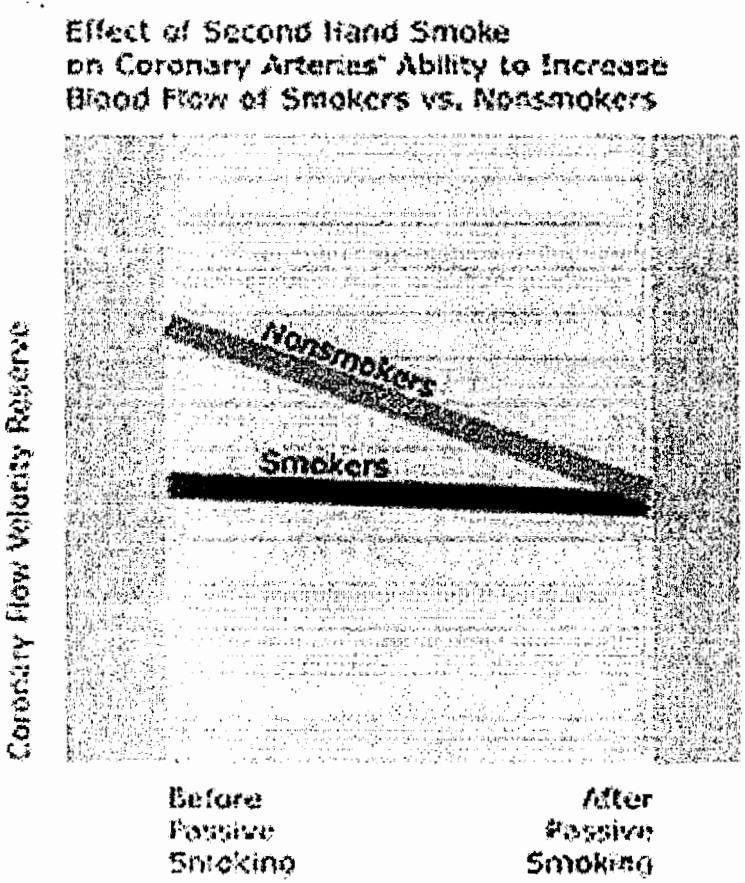
cholesterol build-up in the arteries, like scale in a pipe, until the artery is closed. You can have a clot form in the artery, just like clots in a vein in your leg, and suddenly plug up the artery like a cork in a bottle. Lastly, the artery can spasm and close so tightly as to prevent any blood flow.

Laboratory studies in animals show that rabbits exposed to second hand smoke for six months will have twice as much cholesterol build-up in their arteries as rabbits not exposed. And ultrasound studies in humans have shown that chronic exposure to second hand smoke results in thicker arterial walls. Thus second hand smoke contributes to faster cholesterol build up in our arteries.

Now about platelets: Platelets are small fragments of cells floating around in our blood stream. Their function is to trigger clotting. One mechanism of heart attacks is clot formation. That is why taking aspirin daily reduces heart attacks; it slows down the clotting mechanism, by weakening our platelets so that they do not clump together as quickly. We can measure this effect in the laboratory. Now what happens to platelets when they are exposed to second hand smoke? They become activated. That is, they are primed to clot. Smokers have platelets that are maximally activated. Like a hair trigger on a gun, they are ready to fire. When volunteers are exposed to second hand smoke, their platelets become just as activated as a smoker's platelets. The striking finding is that this takes only 20 minutes. Again, this is an experimentally confirmed finding and is illustrated in the attached graph. If you enter a smoky atmosphere, and stay for 20 minutes, your platelets are ready to clot. It is no wonder you are primed for a heart attack. This effect persists for hours after exposure.

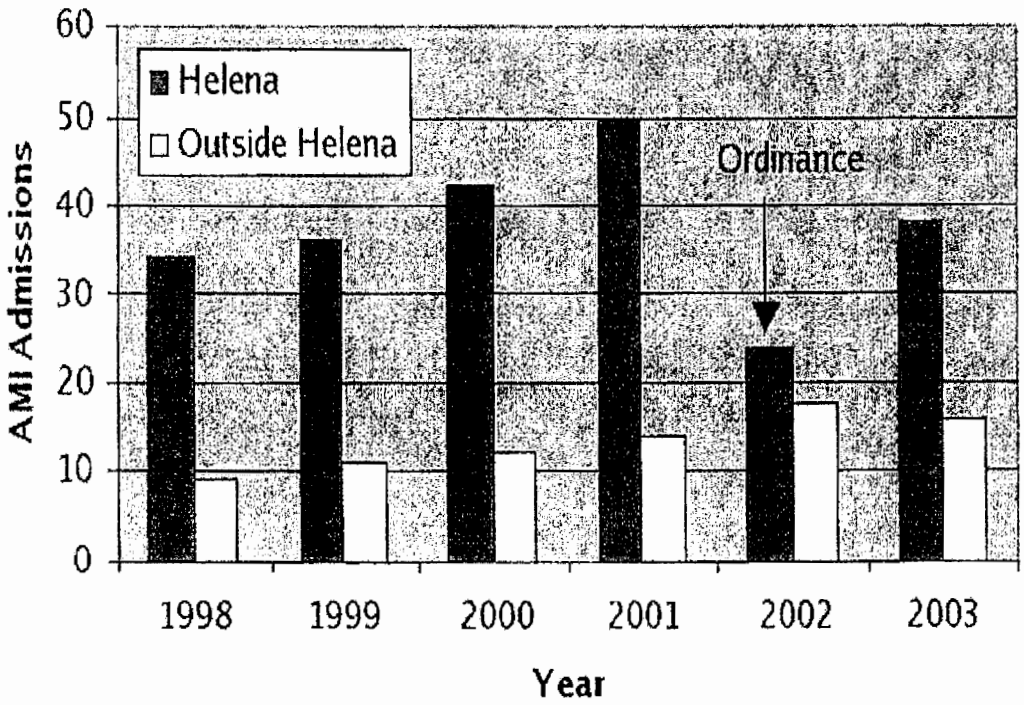


The third mechanism is arterial spasm. The walls of our arteries have muscles that allow the artery to expand to increase blood flow, or contract to shift blood flow to some other area of the body. If those muscles spasm, (much like a Charlie-horse), they can squeeze the artery so tightly that blood flow stops. In one study, they measured the blood flow through the coronary arteries of volunteers, some smokers and some non-smokers. The smokes had 30% less blood flow through their coronary arteries than non-smokers. The researchers then exposed both the smokers and non-smokers to second hand smoke. There wasn't much change in the smoker's arteries, they were already constricted. The striking change was in the non-smokers. Their arteries reduced their blood flow by 30%, to the same lower level as smokers. This took only 30 minutes exposure and persisted for hours after exposure.



What we have now is the "perfect storm", increasing cholesterol build up, activated platelets ready to clot, and narrowed coronary arteries reducing blood flow. And the last two effects occurring very quickly and lasting for hours. Think now about a meal in a smoky restaurant, you are there for a couple of hours, and then you go home and wake up 4 hours later with a heart attack. It is no wonder we never connected these events.

Now to our study: What we did was very simple. We just counted the number of heart attacks to our hospital. We are a small town, isolated and the closest general hospital to ours is 60 miles away, and the closest hospital with cardiac facilities better than ours is 90 miles away. This enabled us to capture all of the heart attacks in our community. What we found is that the number dropped, and dropped significantly, during the six months the ordinance was in effect. It rebounded after the ordinance was suspended. Like a light switch on and off. Was this possibly just chance? Yes, but when we analyzed the probability that this occurred by chance, it was less than 5 in 100 or 1 in 20. Whenever an association occurs with this low probability, it is considered statistically significant.



At the same time, we counted the number of heart attacks outside of Helena. This number did not change. So the association was both temporal (i.e. started with and stopped with the ordinance) and geographical (i.e., it occurred only in the region of our community affected by the ordinance).

Lastly, I would like to point out that the raw data and our analysis was extensively reviewed by the editorial board of the British Medical Journal, one of the most widely respected journals in the world. It was also reviewed by the CDC.

The CDC published an editorial in the same issue of the journal as our paper. They said, and we agree, it is a first study. It had small numbers. It needs to be repeated. We agree on all accounts. They also reviewed a lot of additional information and concluded that the result is biologically plausible and consistent with everything medical science knows about tobacco smoke and heart disease. This lead to the following comments:

- "Even without future studies or replications of these findings the data are sufficient to warrant caution regarding exposure to secondhand smoke. Clinicians should be aware that such exposure can pose acute risks, and all patients at increased risk of coronary heart disease or with known coronary artery disease should be advised to avoid all indoor environments that permit smoking."

- "Additionally, the families of such patients should be counseled not to smoke within the patient's home or in a vehicle with the patient."

I would like to mention that studies of lung cancer and second hand smoke show very similar information. The statistics show that lung cancer is increased in non-smokers exposed to second hand smoke. If you live with a smoker, your risk of lung cancer is increased between 25% and 30%. If you work in an office with a smoker, your risk is about doubled. If you work in a bar, your risk of lung cancer is 3 times higher than workers who are not exposed. The EPA has reported that air quality in bars is six times worse than the air in office buildings. Indeed, a rational, scientific policy would exempt office buildings and restrict smoking in bars.

Just like heart disease, we have made a lot of progress understanding how second hand smoke causes heart disease, we now understand a lot more about how second hand smoke causes lung cancer. We know now carcinogens in tobacco smoke attach to DNA molecules, how the DNA mutates (changes). Using current DNA techniques, we can show that these changes are different when the cancer is caused by cigarette smoke than cancer is caused by other factors. Soon, we will be able to trace the chemicals in cigarette smoke to specific genes and specific mutations in cancer. We will have the smoking gun, the molecular fingerprint proving second hand smoke causes cancer.

Before I finish, I would like to emphasize that a number of different diseases are related to second hand smoke. All of the following diseases have been significantly related to second hand smoke:

- **Respiratory**
  - **Acute LRI children**
  - **Asthma Induction/Exacerbation**
  - **Eye/Nasal Irritation Adults**

  - **Middle Ear infections Children**
- **Developmental Effects**
  - **Low Birth Weight Infants**
  - **SIDS**
- **Carcinogenic Effects**
  - **Nasal Sinus Cancer**
- **Developmental Effects**
  - **Spontaneous Abortion**
  - **Adverse Impact on Cognition and Behavior**
- **Carcinogenic Effects**
  - **Cervical Cancer**
- **Respiratory**
  - **Exacerbation of Cystic Fibrosis**
  - **Decrease Pulmonary Function**

Today, you have the opportunity to protect the citizens of our state from exposure to second hand smoke. You have to ask yourself, is the residual doubt in your mind about these effects worth the risk to your families, your friends, and your neighbors. If just one person dies of a heart attack that you could have prevented, is it worth the risk?

Respectfully Submitted:

Robert Shepard, MD
Medical Director
New West Health Services
130 Neill Ave
Helena, MT 59601

EXHIBIT 10
DATE 2-16-05
HB 643

February 15, 2005

To: Montana Representative Arlene Becker & the House Human Services Committee

My name is Laura Fox from Missoula, MT. I'm here to speak on behalf of my husband, Dan Fox, who passed away 6 years ago this March, and for all the other defenseless people who are being exposed to secondhand smoke.

My husband, Dan, was a non-smoker. We were shocked when he was diagnosed with small-cell lung cancer. This type cancer is found almost exclusively (98 to 99%) in people who smoke. Due to this fact, Dan's doctors believe his cancer was the result of breathing secondhand smoke.

Dan's first exposure to cigarette smoke began as a child living with a parent who was a heavy smoker. His heaviest exposure to secondhand smoke occurred while working for the State of Montana in an office that allowed both coworkers and clients to smoke. This was for a period of seven years.

At the time of his diagnosis, Dan was a very fit mountain climber, runner and health conscious person. He was my high school sweetheart, a wonderful father to our son, Alan, had earned his doctorate in Psychology from the University of Montana, and was a well-respected employee for the State of Montana.

For 3 years, 3 months Dan fought for his life. On March 20, 1999 Dan passed away at age 47.

Garon Smith, a well-known Chemistry professor at the University of Montana gave a lecture regarding pollutants in our environment. He stated, "Genetics loads the gun, environment pulls the trigger". Do YOU know what YOUR genetic make-up is? Every time we breathe secondhand smoke, we are playing Russian roulette.

I'm here to tell you that the effect of secondhand smoke has a face attached to it. It's Dan's face. It's personal. And it's real.

The facts are clear – tobacco kills. There are many laws currently in effect to protect people's health. It's time Montana makes a stand against tobacco, and I'm asking for your help to make this happen.

Thank you for listening.

Laura Fox

Laura Fox
Missoula, MT

EXHIBIT
DATE
HB

...if he could.

Dan Fox

Dear Fellow Montanan,

This is my husband, Dan Fox. He climbed mountains. He was a wonderful husband, and a great dad.

And he didn't smoke.

Dan didn't smoke, but he worked and grew up around people who did. Still, it was a shock when he was diagnosed with lung cancer. And it was an even greater shock when the doctors told us it was the kind smokers get.

Dan was 46 years old when he died.

Second hand smoke kills, right here in Montana. I am writing so you don't have to learn about it the way we did.

Sincerely,

Laura

Laura Fox

Alan

Alan Fox

Laura Fox and her son Alan

EXHIBIT 12
DATE 2-16-05
HB 643

AARP Montana

February 16, 2005

TO: Chairwoman Representative Arlene Becker and Members of the House Human Services Committee

RE: In support of HB 643, Eliminate smoking in enclosed public places

Madame Chairwoman and members of the Committee, for the record my name is Joy Bruck. I am a Volunteer Advocate for AARP Montana. AARP is dedicated to bettering the lives of persons 50 and older. We have a 143,000 members statewide.

AARP speaks today in support of HB 643. It is now known that tobacco smoke is one of the most pervasive and dangerous sources of indoor air pollution and has been classified by the EPA as a class A carcinogen. That means it is as deadly to health as asbestos.

Montana's aging population faces great risks from second-hand smoke. These risks include cancer, bronchitis, emphysema, heart disease, and the list goes on.

This legislation is a big step in keeping our older citizens, as well as everyone else, healthier.

Thank you for giving us the opportunity to testify this afternoon and we urge that you pass HB 643.

30 West 14th Street, Suite 301| Great Northern Addition| Helena, MT 59601| toll-free 866-295-7278| 406-441-2230 fax| toll-free 877-434-7598 TTY
Marie F. Smith, President| William D. Novelli, Chief Executive Officer| www.aarp.org/mt

EXHIBIT 13
DATE 2-16-05
HB 643

DEACONESS BILLINGS CLINIC

February 15, 2005

Representative Ariene Becker, Chairwoman
House Health and Human Services Committee
Montana House of Representatives
Helena, Montana 59620

Dear Madame Chairwoman and Members of the Committee:

As an organization that is concerned with the health and well being of our citizens, and has participated in the development of the Montana Tobacco Use Prevention Plan, we respectfully urge your support of House Bill 643, the Montana Tobacco Free Schools and Smokefree Public Places Law currently in consideration before your committee.

By making public places, particularly our schools, smokefree, we can go a long ways towards helping to prevent kids from starting a lifetime of addition. It will help adults who want to quit smoking and it will help to protect hospitality workers from deadly second-hand smoke.

Tobacco smoke causes the premature death of up to up to 65,000 Americans (175 Montanans) per year who have never smoked but have been exposed to secondhand tobacco smoke. It is a known carcinogen causing 3,000 lung cancers per year in non-smokers. The most significant impact of secondhand smoke is on the cardiovascular (heart) system. Even in limited exposure (30 minutes) tobacco smoke can harm the cardiovascular system.

A November 2002 statewide poll of 602 registered Montana voters by the American Cancer Society, American Heart Association and the American Lung Association of the Northern Rockies showed Montanans support a prohibit on smoking in most indoor public places including workplaces, public buildings, bars, casinos and restaurants by an overwhelming margin of 66% to 29%.

HB 643 would require that all indoor public places – businesses, restaurants, bars and casinos be free of tobacco smoke to protect public health and the health of the employees.

If passed Montana would join the sixteen other states that already have enacted, or are likely to soon pass, workplace legislation for all workers, including restaurant and bar workers.

The Centers for Disease Control and other reputable sources have concluded that the most effective method for reducing exposure to deadly secondhand smoke is the establishment of smoke free environments.

On behalf of Deaconess Billings Clinic, we thank you for your consideration of our views, and urge your support of House Bill 643, the Montana Tobacco Free Schools and Smokefree Public Places Law.

Sincerely,

Nicholas Walter MD CEO
J. Scott Mallikan MD Cardiac, Vascular Surgery
Mark C. Reimann M.D. Chief of Staff
Lee Mallikan MD internal medicine Miles City
Robert N. Hurdon Gen-Surgery
Pulmonary Medicine
06-6yr

2900 Tenth Avenue North • P.O. Box 37000, Billings, Montana 59107-7000 • Deaconess Hospital (406) 657-4000 • Billings Clinic (406) 238-2500 • www.billingsclinic.com

MD Ortho
F. Douglas McCarty MD Internal Medicine

02/15/2005 15:53 4062558405 DBC MARKETING PAGE 05

EXHIBIT 14
DATE 2-16-05
HB 643

"Committed to the protection and promotion of public health"

Gallatin City-County Health Department

February 16, 2005

The Honorable Arlene Becker, Chair
Human Services Committee
Montana House of Representatives
Capitol Station
P.O. Box 201701
Helena, Montana 59620-1701

Dear Representative Becker,

I am writing in support of HB 643. The statistics related to the health hazards of second hand smoke and the associated costs are overwhelming.
This Bill is a commonsense approach to assure that the air our children breath while at school is as clean as possible. Please support HB 643.

Sincerely,

Stephanie Nelson RN, MSN
Health Officer

Cc Bill Warden

February 15, 2005

Dear Representative
Becker and Members of
the House Human Services
Committee:

I write in SUPPORT of HB 643: "An act prohibiting smoking in all public schools and in all places where the public is free to enter..."

It should be as rare for a Montana citizen to breathe second-hand smoke in a public place as it is to encounter any other known carcinogen in a place where the public is free to enter. Yet exposure to this known carcinogen happens daily across the state. There is no justification for treating this known carcinogen differently than we do asbestos, for example, and other known carcinogens or any of the many other hazardous substances that cigarette smoke, itself, contains which are, in fact, individually regulated.

Missoula has had a partial prohibition on smoking in public places for about six years. The only complaints I receive today are of two types:

1) Employees of a worksite in which smoking is allowed who complain that they don't really have much of a choice between quitting their low-income job or suffering the harmful effects of breathing smoke their entire shift. Were they being exposed to asbestos or carbon monoxide at their workplace, a complaint would result in a remedy that would allow them to keep both their job and their health. But non-smoking employees of bars and restaurants have a 30% higher risk of lung cancer than all other non-smokers; and,

2) Patrons who complain of smoke drifting into the "non-smoking area." In my experience, "drawing a line," as is necessary in a partial ban, is difficult and unsatisfactory on a number of fronts. First, there is no true line between non-smoking and smoking areas – the smoke spreads through the establishment, even into other rooms via the ventilation system. Patrons, even though exposure to lesser amounts of smoke than workers, should also be afforded protection because we know that even a small amount of exposure increases heart disease risk and can trigger asthmatic responses that last for days and require expensive treatments and medications.

   Secondly, the jurisdictional boundary of local ordinances, while certainly preferable to having no ability to protect local citizens from smoke, does present its own difficulties. However even-handed a partial prohibition is intended to be, there is a place where the jurisdictional boundary ends. Only a state-wide prohibition in all public places will erase the real problems surrounding the false line between smoking and non-smoking areas and jurisdictions.

I urge you to vote for HB 643 and protect ***all*** Montana citizens – adults of both good and sensitive health, children, pregnant women, and workers at all income levels – from this known carcinogen.

Sincerely,
Ellen Leahy, RN
Health Officer

Flathead City-County Health Department
1035 First Ave. West Kalispell, MT 59901
(406) 751-8101 FAX 751-8102
www.flatheadhealth.org

Community Health Services
751-8110 FAX 751-8111
Environmental Health Services
751-8130 FAX 751-8131
Reproductive Health Services
751-8150 FAX 751-8151
Home Health Services
751-6800 FAX 751-6807
WIC Services
751-8170 FAX 751-8171

Testimony

Representative Jim Peterson, Chairman
House Natural Resources Committee
Montana House of Representatives
Capital Station
Helena MT 59620

Re: HB 622

Dear Chairman Jim Peterson,

The Flathead City-County Health Department does not support the amendments proposed to the Montana Safe Drinking Water Act proposed in House Bill 622. These amendments dilute the Safe Drinking Water Act and put the public's health at risk.

Many of the conditions cited to allow exemption from the Act are unenforceable and over time will be ignored. This will put the public at risk. These amendments may also jeopardize Montana's primacy as it relates to drinking water laws and will likely transfer responsibilities to the U.S. Environmental Protection Agency if the amendments are passed.

We urge you not to support House Bill 622. Please call me if you have any questions.

Sincerely,

Joseph W. Russell, R.S., M.P.H.
Health Officer

CC: Representatives Brown, Everett and Jopek

RESOLUTION OF THE YELLOWSTONE CITY-COUNTY BOARD OF HEALTH IN SUPPORT OF LEGISLATION TO PROHIBIT SMOKING IN PUBLIC PLACES IN MONTANA

The mission of the Yellowstone City-County Health Department is to provide public health services through assessment, leadership, education, prevention and direct services in collaboration with our community partners; and,

WHEREAS, numerous credible scientific studies have determined that secondhand tobacco smoke is a major cause of indoor air pollution that contains more than 40 known human carcinogens, many suspected carcinogens, co-carcinogens, carbon monoxide, sulfur dioxide, nitrous oxides, irritants, systemic toxicants, reproductive toxicants, aromatic hydrocarbons, pesticides, heavy metals, EPA-listed hazardous air pollutants, cilia toxic agents, sub-micron-sized particulates; and,

WHEREAS, numerous credible studies have found that breathing secondhand smoke is a cause of disease in healthy non-smokers including lung cancer, ischemic heart disease, coronary heart disease, cerebrovascular accident, sudden infant death syndrome, respiratory infection, decreased respiratory function and bronchi-constriction; and,

WHEREAS, the Surgeon General has declared that smoking is the largest preventable cause of premature death and disability in the United States, and breathing secondhand smoke is the third largest preventable cause of premature death in the United States; and,

WHEREAS, the Governor's Advisory Council on Tobacco Use Prevention, "recognizes the unique role of local public health boards and departments that are legally charged with protecting the public health," and states that one of the goals of the March 14, 2000 Montana Tobacco Use Prevention Plan is to "substantially increase smoke-free establishments, such as . . . workplaces, restaurants, and public facilities, thereby eliminating exposure to environmental tobacco smoke;" and,

WHEREAS, the Environmental Public Health Tracking (EPTH) Project of the Montana Department of Public Health and Human Services (December 2004) found that a survey of 131 (out of 180) Montana county commissioners listed exposure to secondhand smoke as the second most-cited environmental health concern; and,

WHEREAS, the National Association of County and City Health Officials and the National Association of Local Boards of Health, "clearly state their intention to eliminate - to the extent possible - the devastation wreaked on Americans by a product that when used as intended, causes disease, disability and death," and advocate that Local Boards of Health "promote and support policies, legislation or regulations that ensure that indoor air in places and public venues is free from secondhand tobacco smoke;" and,

WHEREAS, comprehensive smokefree laws have a strong, documented positive impact on helping smokers quit, and on preventing adolescents and children from ever starting tobacco use; and,

WHEREAS, pursuant to Article II, Section 3 of Montana's Constitution, all persons have certain inalienable rights that include a constitutional right to a "clean and healthful environment." And pursuant to Article IX, Section 1 of Montana's Constitution, "the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations;" and,

WHEREAS, for consistency of health and economic interests statewide, any smokefree tobacco legislation should apply equally to all indoor public spaces and workplaces across the State of Montana;

NOW **THEREFORE BE IT RESOLVED**, the Yellowstone City-County Board of Health strongly supports legislation to prohibit smoking in all public places and workspaces in Montana as well as providing for tobacco-free schools and urges the Legislature to pass and the Governor to sign legislation codifying this important public health policy for Montana.

ADOPTED by the Yellowstone City-County Board of Health on February 14, 2005.

F. Douglas Carr, MD
Board of Health Chair

C:\D Drive\@ycchd\BOH\DOCUMENTS\Statewide Smokefree Legislation resolution.doc

CITY-COUNTY HEALTH DEPARTMENT

115 4th Street South • Great Falls, MT 59401 • 406-454-6950

RESOLUTION OF THE CASCADE COUNTY CITY COUNTY BOARD OF HEALTH IN SUPPORT OF HB 643

LEGISLATION TO PROHIBIT SMOKING IN PUBLIC PLACES IN MONTANA

WHEREAS, secondhand tobacco smoke has been categorized as a known carcinogen by the United States Environmental Protection Agency (EPA); and,

WHEREAS, numerous scientific studies have determined that secondhand tobacco smoke is a major cause of indoor air pollution that contains more than 40 known human carcinogens, many suspected carcinogens, co-carcinogens, carbon monoxide, sulfur dioxide, nitrous oxides, irritants, systemic toxicants, reproductive toxicants, aromatic hydrocarbons, pesticides, heavy metals, EPA-listed hazardous air pollutants, cilia toxic agents, sub-micron- sized particulates; and,

WHEREAS, numerous studies have found that breathing secondhand smoke is a cause of disease in healthy non-smokers including lung cancer, ischemic heart disease, coronary heart disease, cerebrovascular accident, sudden infant death syndrome, respiratory infection, decreased respiratory function and bronchi-constriction; and,

WHEREAS, the American Cancer Society has determined that secondhand tobacco smoke kills 65,000 nonsmokers in our country annually; and,

WHEREAS, the Surgeon General has declared that smoking is the largest preventable cause of premature death and disability in the United States, and breathing secondhand smoke is the third largest preventable cause of premature death in the United States; and,

WHEREAS, at special risk from secondhand tobacco smoke are infants, children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and,

WHEREAS, a significant amount of secondhand tobacco smoke exposure occurs in the workplace, and studies show that employees who work in smoke-filled businesses suffer a 25-50% increased risk of heart attack and higher rates of death from cardio-vascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung functioning; and,

WHEREAS, the National Institute for Occupational Safety and Health, the Environmental Protection Agency, and the Surgeon General have recommended that all preventable measures should be used to minimize occupational exposure to secondhand tobacco smoke; and,

WHEREAS, the Environmental Protection Agency (EPA) has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and,

WHEREAS, the National Association of County and City Health Officials and the National Association of Local Boards of Health, "clearly state their intention to eliminate - to the extent possible - the devastation wreaked on Americans by a product that when used as intended, causes disease, disability and death," and advocate that Local Boards of Health "promote and support policies, legislation or regulations that ensure that indoor air in places and public venues is free from secondhand tobacco smoke;" and,

WHEREAS, comprehensive smokefree laws have a strong, documented positive impact on helping smokers quit, and on preventing adolescents and children from ever starting tobacco use; and,

WHEREAS, pursuant to Article II, Section 3 of Montana's Constitution, all persons have certain inalienable rights that include a constitutional right to a "clean and healthful environment." And pursuant to Article IX, Section 1 of Montana's Constitution, "the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations;" and,

WHEREAS, for consistency of health and economic interests statewide, any smokefree tobacco legislation should apply equally to all indoor public spaces and workplaces across the State of Montana;

NOW **THEREFORE BE IT RESOLVED,** the Cascade County City County Board of Health strongly supports House Bill 643, a bill to prohibit smoking in all public places and workspaces in Montana as well as providing for tobacco-free schools, and urges the Legislature to pass this important public health policy for Montana.

ADOPTED by the Cascade County City County Board of Health on February 16, 2005.

Marcus Johnson, M.D.
Board of Health Chair

Members:
Donald P. Jelinek, DDS
Bryan Dunn, Ed.D.
Iva "Boots" Wiseman
Lyle Meeks
Deb McCracken
Peggy Beltrone

RESOLUTION OF THE
LEWIS & CLARK CITY-COUNTY BOARD OF HEALTH
IN SUPPORT OF HB 643

LEGISLATION TO PROHIBIT SMOKING IN PUBLIC PLACES IN MONTANA

WHEREAS, secondhand tobacco smoke has been categorized as a known carcinogen by the United States Environmental Protection Agency (EPA); and,

WHEREAS, numerous scientific studies have determined that secondhand tobacco smoke is a major cause of indoor air pollution that contains more than 40 known human carcinogens, many suspected carcinogens, co-carcinogens, carbon monoxide, sulfur dioxide, nitrous oxides, irritants, systemic toxicants, reproductive toxicants, aromatic hydrocarbons, pesticides, heavy metals, EPA-listed hazardous air pollutants, cilia toxic agents, sub-micron- sized particulates; and,

WHEREAS, numerous studies have found that breathing secondhand smoke is a cause of disease in healthy non-smokers including lung cancer, ischemic heart disease, coronary heart disease, cerebrovascular accident, sudden infant death syndrome, respiratory infection, decreased respiratory function and bronchi-constriction; and,

WHEREAS, the American Cancer Society has determined that secondhand tobacco smoke kills 65,000 nonsmokers in our country annually; and,

WHEREAS, the Surgeon General has declared that smoking is the largest preventable cause of premature death and disability in the United States, and breathing secondhand smoke is the third largest preventable cause of premature death in the United States; and,

WHEREAS, at special risk from secondhand tobacco smoke are infants, children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and,

WHEREAS, a significant amount of secondhand tobacco smoke exposure occurs in the workplace, and studies show that employees who work in smoke-filled businesses suffer a 25-50% increased risk of heart attack and higher rates of death from cardio-vascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung functioning; and,

WHEREAS, the National Institute for Occupational Safety and Health, the Environmental Protection Agency, and the Surgeon General have recommended that all preventable measures should be used to minimize occupational exposure to secondhand tobacco smoke; and,

WHEREAS, the Environmental Protection Agency (EPA) has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and,

WHEREAS, the National Association of County and City Health Officials and the National Association of Local Boards of Health, "clearly state their intention to eliminate - to the extent possible - the devastation wreaked on Americans by a product that when used as intended, causes disease, disability and death," and advocate that Local Boards of Health "promote and support policies, legislation or regulations that ensure that indoor air in places and public venues is free from secondhand tobacco smoke;" and,

WHEREAS, comprehensive smokefree laws have a strong, documented positive impact on helping smokers quit, and on preventing adolescents and children from ever starting tobacco use; and,

WHEREAS, pursuant to Article II, Section 3 of Montana's Constitution, all persons have certain inalienable rights that include a constitutional right to a "clean and healthful environment." And pursuant to Article IX, Section 1 of Montana's Constitution, "the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations;" and,

WHEREAS, for consistency of health and economic interests statewide, any smokefree tobacco legislation should apply equally to all indoor public spaces and workplaces across the State of Montana;

NOW THEREFORE BE IT RESOLVED, the Lewis and Clark City-County Board of Health strongly supports House Bill 643, a bill to prohibit smoking in all public places and workspaces in Montana as well as providing for tobacco-free schools, and urges the Legislature to pass this important public health policy for Montana.

ADOPTED by the Lewis and Clark City-County Board of Health on February 16, 2005.

Jennifer M. Wintersteen

Jennifer Wintersteen,
Board of Health Chair

Sheena Wilson

Sheena Wilson
Vice Chair

Members:
Dr. Joel Cleary
Peter Donovan
Anita Varone
Sandy Oitzinger
Terrie Casey
Dr. Bruce Messinger
Ken Wallace

EXHIBIT 15
DATE 2-16-05
HB 643

Testimony of Richard P. Sargent, MD, House Human Services Committee, HB 643

February 16, 2005

Second hand tobacco smoke is toxic. The data is very clear: This is a health issue.

* 8 hours of work in a smoke filled workplace is the health equivalent of smoking one pack daily

* This applies to non-smokers and to smokers. Sidestream tobacco smoke is an indoor air pollution problem.

* Phillip Morris Tobacco Company knew in 1961 that five sixths of a cigarette smolders into the room for everyone to breath. Only one sixth gets filtered through the smokers lungs.

*The same tobacco companies that told us nicotine is not addictive offer ventilation as an alternative. But it takes a crosswind of 22 miles per hour or an updraft of 13 miles and hour to adequately clear smoke from a room. That is not mechanically or financially feasible.

*Opponents will claim impending financial disaster. But studies emphasizing objective, verifiable data, such as sales and liquor tax receipts, unemployment claims and bankruptcies show no discernable effect. From Texas to Maine, New Mexico to New York and even in Ireland, there is no objective data to back up the forecasts of economic gloom and doom.

*Our state and communities regulate the tavern, casino and restaurant industries, always in the name of protecting public health. We regulate water temperature, soap quality, frequency of cleaning and temperature of food storage, how often the bathrooms are cleaned and what soap is used. We do this to prevent disease. Those same rules state toxic chemicals not necessary for the operation of the facility are not allowed. HB 643 is a continuation of that process. Tobacco smoke does not deserve to be above the law.

* Opponents will argue business rights, but we have heard about the limitations on personal liberty rights. In the free exercise of your rights, you may not harm others. We have barely scratched the surface in showing the effects of a poison, Second Hand Smoke, and the harm it causes to all those exposed.

*The most recent exposure carries the highest risk. Just 30 minutes to two hours of exposure gives all of us the same risk factors as active smokers. The toxins in tobacco smoke are a big risk factor for employees but also for patrons. Second hand smoke does not discriminate. It poisons everyone who comes in contact, non smokers and smokers alike.

* Dr. Shepard talked about the effects we found on heart disease. After reading our study the Centers for Disease Control recommended all people with known heart disease avoid second hand smoke exposure. Their scientific conclusion was second hand smoke is too hazardous for any exposure.

* Sixty per cent of Montanans say it is time to clear the air. To be fair the law needs to apply to everyone equally. I urge you to pass HB 643

WHAT DOES
SMOKE
Cross wind
22 miles/hour
Updraft of 13
miles/hour
www.despair.com

CHEMISTRY OF CIGARETTE SMOKE

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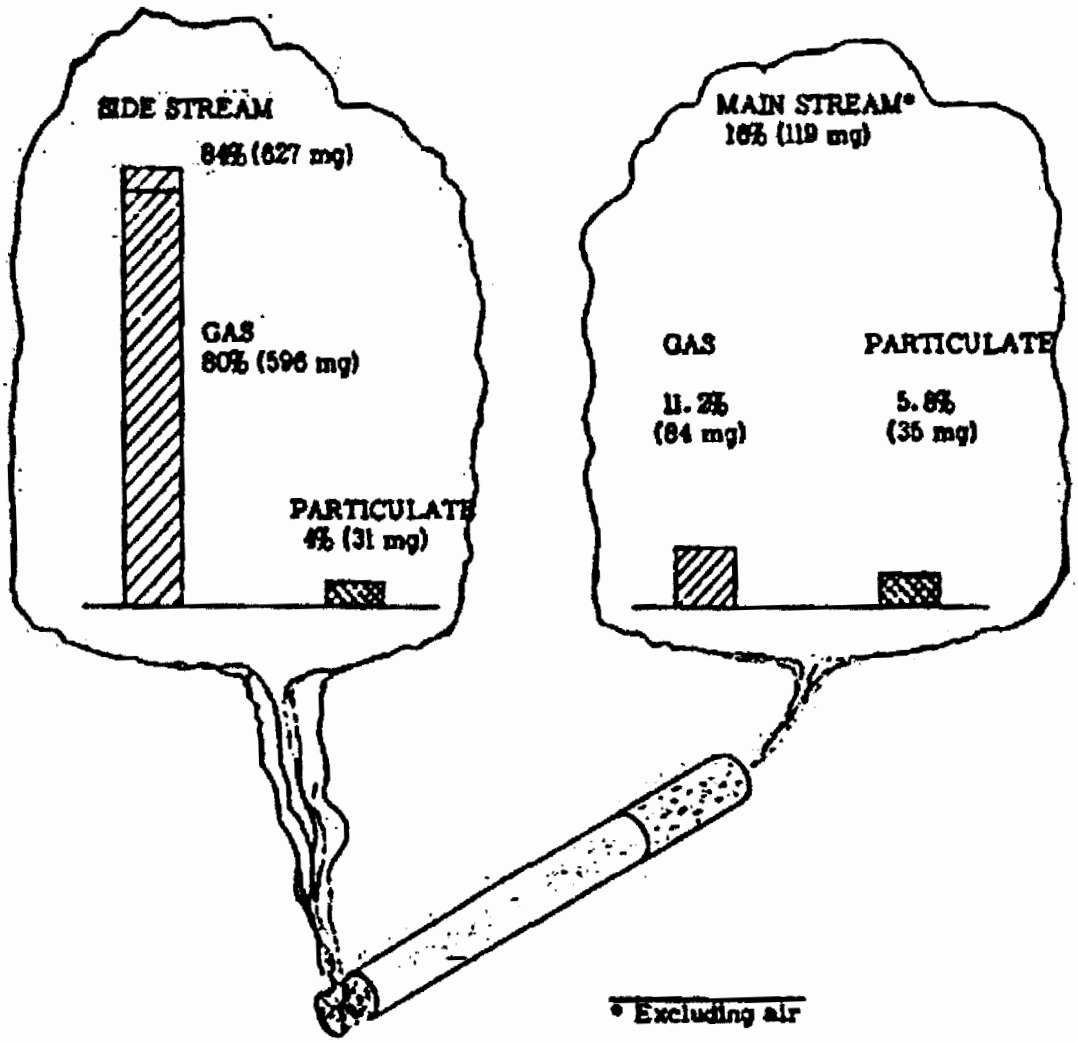

Total of more than 400 compounds of which about 50 have been identified for the first time by the Philip Morris Research Center.

CONFIDENTIAL

2024947175

montana public health association
PMB 114 ▪ Marketplace Drive Suite 28 ▪ Great Falls, MT 59404
Since 1918

EXHIBIT 16
DATE 2-16-05
HB 643

February 14, 2005

Montana House
Human Services Committee
PO Box 200500
Helena, Montana 59620-0500

Dear Committee Members:

The membership of the Montana Public Health Association supports HB643.

A burning cigarette is a miniature toxic waste dump on fire. This toxic waste dump emits forty-three known cancer-causing substances. These cancer-causing chemicals are Class A carcinogens, (asbestos is a Class A carcinogen) meaning there is absolutely no safe level of secondhand smoke.

Opponents will argue "business rights." But there are many examples where our government, of which you are members, has interfered with "business rights" for the sake of workers' rights and the public welfare. Our government has been involved in workers' rights since the turn of the century. Our government prohibits "business rights" from placing employees near exposed asbestos, lead paint chips or radon. Our government doesn't let "business rights" decide whether or not rodents are kept out of restaurants' kitchens. Our government doesn't let "business rights" decide whether cooks should be required to wash their hands before handling customers' food. It would be preposterous for businesses who want "business rights" to knowingly expose their workers to cancer-causing chemicals, and to tell employees they can work elsewhere if they don't like it.

Our government has always recognized that there can and should be a limitation on peoples' behaviors when those behaviors affect other people—especially the health and safety of others. When has the argument been allowed that workers and public health could be jeopardized because it's a "business right?"

One of your responsibilities as a lawmaker is to protect the public's health and welfare. And this is, above all, a public health issue. So, it is time to clear the air and vote for HB643.

Sincerely,

Lora Wier

Lora Wier, President
Montana Public Health Association

EXHIBIT 17
DATE 2-16-05
HB 643

Laura Shelton, MD
915 4th Street NW
Choteau, MT 59422

February 16, 2005

TO: Arlene Becker, Chairman and Members
House Human Services Committee Members

SUBJECT: Support of HB 643

Dear Chairman Becker and Members:

I strongly support passage of HB 643-Tobacco Free Schools & Smokefree Public Places Law. This legislation will protect the health and the lives of many Montanans.

Secondhand smoke is responsible for 3,000 lung cancer deaths annually in otherwise health nonsmokers and it causes between 35,000 to 40,000 deaths from heart disease every year. It has been proved that even relatively low exposure significantly increases the risk of heart disease.

Secondhand smoke also causes emphysema and lung disease. Secondhand smoke contains over 4,000 substances, and more than 60 are known or suspected to cause cancer. The EPA has classified secondhand smoke as a Group A carcinogen, a substance which is known to cause human cancer.

Public places that are free of deadly tobacco smoke will prevent our kids from starting a lifetime addiction, help adults who want to quit smoking and protect our kids, seniors and hospitality workers from secondhand smoke that causes the premature death of 175 Montanans, per year who have never smoked but have been exposed to secondhand tobacco smoke.

I urge you to pass this public health measure. Montana lives are depending on it.

Sincerely,

Laura Shelton, MD
Health Officer
Teton County Health Department

EXHIBIT 18
DATE 2-16-05
HB 643

Tim Sinton, PA
Choteau, MT 59422

Letter in SUPPORT Of House Bill 643

Committee Members:

Montanans have consistently shown their support for policies that address tobacco disease prevention by supporting the tobacco tax increase I-149 by 62% in 2004, funding of a tobacco disease prevention program I-146 by 65% in 2002 and creating the Tobacco Settlement Trust CA-35 by 73% in 2000.

Montanans know that tobacco free schools and campuses will help prevent kids from starting a lifetime of addiction, help adults who want to quit smoking and protect our kids and other Montanans from the toxic smoke that causes premature death of up to 175 Montanans per year who have been exposed to secondhand tobacco smoke.

My daughter Shanna has been active in the Teton County Tobacco Prevention Youth Coalition and I was shocked to learn the level the tobacco companies will go to promote and market this deadly product to our kids. Through her activities and those of other tobacco prevention advocates our kids are getting the important message of tobacco free lifestyles.

This legislation will expand the efforts of the coalitions and assist in providing a comprehensive tobacco prevention program.

I urge you to vote yes to this bill. This is a public health issue that will result in saving lives. What can be more important than that?

Sincerely,

Tim Sinton, Physician Assistant

EXHIBIT 19
DATE 2-16-05
HB 643

Nancy H. Semenza LAC, NCAC II

February 15, 2005

Testimony before the House Human Services Committee **In Support of HB 643 of**
TOBACCO FREE SCHOOLS & SMOKEFREE PUBLIC PLACES LAW

Chairperson Becker, Members

I am here today, not only as a private citizen, but as a Licensed Addictions Counselor to speak in support of HB643-Tobacco Free Schools & Smokefree Public Places Law.

I also supported the Initiative 149-the tobacco tax. I supported Initiative 146 the funding of the tobacco disease prevention program. I did so because, as a cancer survivor and an addictions counselor, I believe tobacco is one of the worst addictions and health hazards in our country.

I started smoking in the late 50's when the tobacco companies were telling us, " nicotine is not addictive" while all the time adding nicotine to cigarettes so that we would continue to smoke. I quit two years after I had surgery, chemotherapy, and radiation for bi-lateral breast cancer, not because I was afraid of for my health, I was too addicted to cigarettes to think that constructively; I quit because smoking became extremely inconvenient to me. The side effects of my quitting smoking 17 years ago are that I can breathe without wheezing, I don't cough all the time, my blood pressure is no longer high and I am no longer rated for insurance because of lung disease.

We have definitive proof that tobacco causes cancer. Now, thanks to a study done in Helena Mt. by Drs. Sargent and Sheperd, we have definitive proof that second hand smoke causes heart attacks. The tobacco companies will say that this study is too small to prove anything, but pharmaceutical companies have quoted smaller studies as proof of the efficacy of their drugs for years.

In conclusion, we know that tobacco causes cancer in the user. We know that tobacco is addictive to the user. Now we know that second hand smoke can be fatal to the people around the user. I believe it is necessary to protect the unsuspecting people around the user. Please vote in favor of HB 643 to protect Montana lives.

Nancy H. Semenza

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ARTICLE: ADMINISTERING JUSTICE IN MONTANA'S RURAL COURTS

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LEXISNEXIS SUMMARY:
... On occasion, I use my personal vehicle due to road conditions or other travel limitations. ... The rural court's schedule and schedule of counsel often result in stacking of matters (i.e., setting more than one matter for the same time). ... Pretrial matters on multi-million dollar damage claims over natural resource development and extraction issues can be heard just moments after approving an accounting and property division in the split of a large family farm. ... Public defenders can travel hundreds of miles just to get to the courtroom. ... Today's technology also provides considerable help in making rural courts more accessible. ... In addition, the court is unable to use the law clerk as a special or standing master to conduct preliminary matters such as initial appearances, arraignments, detention hearings, bail-reduction requests, abuse-and-neglect, show-cause, and temporary support arrangements. ... Many litigants cannot afford the time and money to travel elsewhere for professional services. ... Further, rural courts are generally located in small communities where close acquaintanceships can develop between the court, its staff, the attorneys, and the public generally being served. ... The rural court and attorneys must be more inclined to ask questions of prospective jurors and witnesses in the effort to search for the truth and to understand any bias or prejudice. ... At a recess, I invite both attorneys to my chambers to encourage more interaction with the jury panel. ... The distance factor also means less contact between the rural courts.

HIGHLIGHT: A young mother sits among the prospective jurors holding her baby. When I inquire about hardships, she explains that she truly cares about our judicial system and wants to do her civic duty but that her mother just broke her wrist and she had no other childcare options. In another matter, an elderly juror shuffles forward to the bench and explains that he hitchhiked the 40 miles to court and he has no ride home.

TEXT:

[*201]

The foregoing is a typical scenario in Montana's rural courts. The district courts located in Montana's more rural areas deal primarily with respectful populations that greatly appreciate the judicial branch. Although serving less populated areas, these courts and the lawyers appearing before them often see the best rural Montana has to offer--these are community-minded and friendly people.

Montana is the fourth largest state in the United States, n1 but one of its most rural states. n2 It is third only to Alaska and Wyoming in fewest people **[*202]** per square mile. n3 Montana's vast area is divided into 56 counties with each having their own local governing bodies. Nearly all govern more area in their respective counties than the Governor of Rhode Island. n4 Several of these counties cover an area close to, or exceeding, three times the size of Rhode Island. n5

A district court is located in each of Montana's 56 counties. By state law, these 56 district courts are administratively structured into 22 judicial districts. n6 These judicial districts range in size from one county to as large as seven counties. As of January 1, 2009, Montana had 43 district court judges to serve all these judicial districts. n7

Montana has ten district court judges to preside over a contiguous area larger than Maryland and the six states making up New England. n8 Nearly **[*203]** 80% of Montana is covered by judicial districts that average no more than one judge per county. n9

Many of these "rural courts" and the attorneys practicing law before them experience both satisfaction and challenges varying greatly from the experiences of those in more urban areas of the state. This article will share some thoughts and experiences on these matters from the perspectives of judges for two of Montana's neighboring rural courts. n10

I. Access to Court

Article II, Section 16 of the Montana Constitution provides:

Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property or character. n11

District courts are courts of general jurisdiction. As such, the district court in each county will preside over all felony, probate, abuse and neglect, and adoption cases. It will also preside over various special actions, such as naturalizations and writs, most parenting cases, cases in equity, as well as all civil cases with claims over $ 7,000 and all civil actions that can result in a money judgment against the State. The district court also has appellate jurisdiction over cases arising within the justice and city courts of a county. n12

The constitutional mandates for open access to all and for a speedy remedy for every injury are constant challenges for the rural courts in Montana. n13 To meet this challenge, the law requires regular accessibility to the district courts in every county. n14 This access calls for regular appearance by the court participants. Those participants routinely include the district court judge, the court clerk, the court reporter, attorneys, and litigants. **[*204]** With various witnesses and jurors, the number of participants can be quite large.

The parking lot is filled with muddy vehicles. The corridor is standing room only. Many of the summoned jurors know each other and others just get acquainted. The conversations cover topics such as last week's livestock market, the

weather forecast, a quilting project, the upcoming ballgame, a hot fishing hole and, of course, the grandchildren.

The deputies maneuver among the crowd to direct counsel to a secure room to meet with the defendant. The sheriff lingers to visit and assure witnesses are kept elsewhere. Ultimately, the defendant, counsel and jurors are directed to the courtroom. The prosecutor is already there. Voir dire begins. As individual jurors are excused, they nod goodbye to those still on the panel. The whole process seems to bring the community closer together.

The regular appearance must move court matters toward a "speedy remedy ... for every injury." n15 This constitutional requirement means the court must hold regular "law and motion" dates in each county. Throughout rural Montana, these regular law-and-motion days are generally no less than two days per month and up to several days per week. n16

The regular law-and-motion calendar frequently requires travel. Litigants, attorneys, and witnesses can be from another county or state. Local litigants and jurors frequently reside several miles from the county seat where the courthouses are located. Travel burdens for all must be considered in assuring the court remains accessible.

The mother and children moved to northeastern Montana two years ago. The father and paternal relatives still reside in Idaho. The children attended school and received professional counseling there. Father retains an attorney from western Montana and closer to his witnesses. Mother lists Montana school teachers and counselors as witnesses. In a pretrial order, parties are informed to know witness' schedule conflicts and be prepared for a firm trial setting.

The judge of the multi-county judicial district must travel to each county. This travel significantly impacts the availability of the rural court judge and staff. A 2007 National Center for State Courts (NCSC) survey showed several Montana rural court judges spend nearly one-fourth of the time available for court activity traveling. n17

I am assigned a state motor vehicle. On occasion, I use my personal vehicle due to road conditions or other travel limitations. My travel logs **[*205]** show that I average nearly 20,000 miles per year for judicial business. The court reporter has a corresponding demand.

This travel demand comes with Montana's travel hazards, such as two-lane traffic, road construction, sudden storms, the blinding sunrise or sunset, and the ever-present roadside wildlife. Large trucks, tractors, RV's, and travel trailers use the same roads. All these hazards can, and frequently do, delay matters.

It is ten minutes before start of court. The court reporter has not yet arrived. The clerk appears to advise she hit a deer and her vehicle is temporarily inoperable. Court is delayed to allow alternate transportation. I hit two pheasants on the same stretch of roadway just a week later.

The travel requirement makes for practical challenges as well. To ensure a vehicle is fueled and properly maintained requires extra effort. Updated weather and road reports must be considered. The judge must provide time at each court

for administrative and chamber tasks. All this traveling can impose fatigue. After a long and tiring day in court, the rural court judge often travels many miles back home alone. n18

I'm thinking, "Just don't hit the brakes."

It's a dark autumn evening. The northwest wind is blowing and the temperature hovers around 32 degrees. I have spent all day presiding in a contentious case at Roundup. As I drive the 160 miles home, I follow another vehicle traveling the same direction. At the crest of a hill, we encounter black ice. The vehicle in front of me slides sideways towards oncoming traffic. The two vehicles collide.

I carefully guide between the two and go another quarter mile before I am able to stop. On turning around, I find the occupants not seriously injured and wait the two hours for assistance.

At the same time, this travel time offers a peaceful opportunity to reflect on the day's events. During the trip home, many rural judges sort out the legal argument just heard and mentally organize their decisions. Attorneys do the same regarding their presentations of the case and oral arguments. An occasional sunrise, sunset, or other encounter can provide a memorable and stress-relieving event.

On my way through the Missouri River Breaks, I notice four bull elk about to cross the highway. They wait along the road edge as vehicles slowly pass within a few feet of them. The day in court was long but the memory of this event made it easier.

Accessibility also means the rural court's calendar must be somewhat flexible. During regular law and motion, a rural court can expect to conduct initial appearances, arraignments, omnibus hearings, hearings for a change **[*206]** of plea, adult sentencings, youth dispositions, abuse and neglect hearings, temporary orders of protection, default or stipulated divorces, parenting modifications, name changes, step-parent adoptions, probate statuses, pretrial civil motions, and the like. Since the judge is not always in that county, parties sometimes present matters with little or no notice. A rural court judge cannot always anticipate this type of "last-minute activity."

It's one-hour travel--then regular law and motion at 9:00 A.M. An arraignment turns into a change of plea. The omnibus hearing has several contested motions. The dispositional hearing involves a factual dispute. The summary judgment hearing is delayed until after lunch. The afternoon calendar is more of the same. Court finally adjourns after 7:00 P.M. Another hour to review and sign documents in chambers. I leave for home.

Carryover of regular law-and-motion matters to the following day is difficult for many rural courts. The calendar must allow time for extended hearings and trials at each district court. For this purpose, certain days of each month are generally assigned for regular law and motion and the balance of the month is assigned for extended hearings and trials.

The rural court's schedule and schedule of counsel often result in stacking of matters (i.e., setting more than one matter for the same time). In the multi-county districts, this stacking can result in the court scheduling matters for the

same time at different locations. As earlier-stacked matters proceed to hearing or trial, the others move to a different date but, even then, there is no assurance the delayed matter is heard.

On a particular day, I schedule extended hearings or trials at three different locations--260 miles apart. One setting is actually a carryover requested by counsel from a week-long jury trial that was set to commence the previous week.

Hearings or trials that extend beyond the allotted time can significantly disrupt a rural court's accessibility. As noted, later-stacked matters must be moved. Regular law and motion may need to be moved to accommodate these matters. All of these changes will have a domino effect on the participants' availability and the timely hearing of other matters.

Long-term detention facilities are frequently in other communities and the smaller sheriff's offices need time to arrange transportation. Attorneys will have matters in several courts and judicial districts. The expert witness may have already set aside appointments for the hearing or trial. Jurors, litigants, and other witnesses sometimes have personal or seasonal hardships. n19

[*207] Certain priority settings must also be recognized. The criminal matters must be calendared to provide the accused with his or her right to a speedy public trial. n20 By statute, Youth Court proceedings must be heard without delay. n21 Other statutes also impose deadlines. For example, unless respondent requests additional time, initial hearings and dispositions of petitions for mental commitment must occur within five days. n22 Hearings after a temporary order of protection or an initial show-cause hearing on an abuse-and-neglect petition must occur within 20 days. n23

Rural courts, like all courts, can face a variety of complex issues every day. Pretrial matters on multi-million dollar damage claims over natural resource development and extraction issues can be heard just moments after approving an accounting and property division in the split of a large family farm. Interesting and challenging jurisdiction issues develop. Pretrial challenges to the admission of evidence are common. Resolution of personal injury claims will frequently require in-depth knowledge of the human anatomy and medical procedures.

The criminal offense involved the collision of two boats in the middle of the Fort Peck Reservoir in northeastern Montana. This reservoir has more shoreline than the west coast of California. n24 A jurisdictional issue arose involving the location of the collision. The issue was resolved only after old surveys and aerial photographs were presented and explained through expert testimony.

Rural Montana needs more residential attorneys. Many county prosecutor offices are understaffed. Other counties employ only part-time prosecutors whose prosecution work must balance with private practices. A few counties have no residential attorneys outside of the prosecutor's office. Other established attorneys often do not have the time or the willingness to perform public defender services.

Public defenders can travel hundreds of miles just to get to the courtroom. n25 When the case involves multiple parties entitled to counsel, it can prove a challenge to find independent counsel for each party.

[*208]

In a recent case, the State removed a young child from the home based on alleged abuse and neglect. The Office of the

State Public Defender had attorneys from three different communities representing the parents and the child. At the show-cause hearing, the child's attorney appeared in person, the mother's attorney appeared by audio-video conference from 165 miles to the west and the father's attorney appeared in a similar fashion from 150 miles to the southeast.

The shortage of attorneys and the increased availability of forms through today's technology have resulted in courts seeing a significant rise in self-represented litigants. Self-represented litigation is more time-consuming. Pleadings do not clearly recite the issues or legal authority. Parties do not understand what evidence is relevant to a claim or a defense. Litigants generally are not familiar with procedural or evidentiary rules.

The next case on the daily docket involves a pro se pleading entitled "Motion and Affidavit for Enforcement of Parenting Plan." On closer review, I find the petitioner-mother is actually seeking contempt findings and modification of a previously stipulated parenting plan. The previous plan contained the parents' written agreement for a joint residential schedule.

At the hearing, the mother testifies that the parties made several modifications to the residential schedule. None of these modifications was reduced to writing. She also states that following these modifications, the father has moved out of the state with the child more than a year ago and has refused to allow her contact with the child or to identify his new residence.

The father also appears pro se and responds by stating that a local child protection specialist authorized the move during an abuse-and-neglect investigation of the mother that resulted in removal of other children from the home. The father claims this investigation involved serious bodily injury to an infant caused by the mother's brother and the mother's efforts to conceal the cause of injury. The father states that the child thrives under his care and that he would fear for the safety of the child if he disclosed the whereabouts of the child or returned the child to the mother.

The mother replies by stating the abuse-and-neglect investigation has long since closed. She also attempts to rebut the father's statements with investigative reports and with email correspondence between herself and the father's current wife. On my inquiry, she attributes the delay in seeking judicial relief to failed efforts to obtain help from local law enforcement, prosecutors, and the child protection services, as well as her limited financial resources and uncertainty on how to proceed as a self-represented litigant.

Neither parent calls any other witness. I recess the proceedings to subpoena local law enforcement and child protection services representatives. When we reconvene, it takes a full day to gather and sort out the relevant evidence.

[*209] Today's technology also provides considerable help in making rural courts more accessible. Since state assumption in 2001, n26 the Supreme Court and the District Court Council have made available to district courts throughout the state technology such as the Internet, case-management software, fax machines, and two-way audio-video communication. n27

I have ten matters scheduled on law-and-motion day. With a raging blizzard outside, cancellations are coming constantly. Of the few hearings held, one had to be continued because of the absence of a witness. I can conduct the other hearings only because the local attorneys make it to the courthouse and the out-of-town counsel appears by video conferencing.

These technological resources still have their limits. Fax copies do not transmit in color and can be illegible. Audio can be subject to static interruption and the microphone is unclear if it is too sensitive. The video limits the viewing of a witness's demeanor or manner of testifying and prevents use during testimony of most demonstrative charts. Momentary delay in both the audio and video can occur. The court can have difficulties controlling the physically absent witness or attorney. Confrontational problems exist in criminal cases. n28 Montana statute allows this type of communication to be used in only certain criminal proceedings. n29

As the technology improves and fewer litigants object to its use, it can become a valuable timesaving tool. It can also increase workload as the technology allows better access for litigant research and the increased availability of experts.

In the weeks before a trial, I hold two summary judgment hearings where all counsel appear by audio-video conferencing. I also receive by email the proposed findings of fact and conclusions of law. At trial, I set up my laptop to real-time reporting. The laptop is connected to the Internet at the bench and contains an updated disk with all Montana Supreme Court decisions and statutes.

The attorneys set up their own laptops and provide me with a disk containing the master exhibit list and bench copies of the exhibits. The parties stipulate to an expert witness appearing by two-way audio-video connection. During cross-examination, the expert is faxed a document for review. At a recess, I check an email with a recent schedule change. When counsel requests a short delay, the updated calendar is at my fingertips.

[*210]

II. Resources

The District Court Council determined the minimum level of staff support for each judge should be one court reporter, one law clerk, and one judicial assistant. n30 The NCSC premised its 2007 Judicial Workload Assessment Study upon each district court judge having this staff support. n31 Several rural courts still do not have this minimal staffing. n32 To that extent, the study does not paint the true workload assessment for the understaffed rural court.

The NCSC Study acknowledged this deficiency in its findings that identify the uniqueness of rural courts and that state the study was based only on a quantitative model and not on qualitative factors. n33 Such qualitative factors include staff shortages and the corresponding additional workload placed on the residential judge of that court. n34 Rural judges often spend time on tasks that judicial staffs perform in other courts.

Lack of judicial assistance means all the time-consuming scheduling and administrative tasks are placed on the judge. Without a law clerk, the rural court spends precious time doing all the reading, research, legal analysis, reflection, and opinion-writing. In addition, the court is unable to use the law clerk as a special or standing master n35 to conduct preliminary matters such as initial appearances, arraignments, detention hearings, bail-reduction **[*211]** requests, abuse-and-neglect, show-cause, and temporary support arrangements.

The absence of minimal staffing can impact the quality of a court's performance in other ways. Many rural court judges spend evenings and weekends trying to keep up with the workload. Judicial burnout can result from consistently putting in these additional hours. Such consistent effort can also isolate the judge from a community, potentially placing him "out-of-touch" with the community's values.

Complex pretrial matters for an understaffed court delay the setting of the trial date. The judge cannot hastily review a pending pretrial motion without risking the oversight of critical evidence or of controlling legal precedent.

During this time, decisions on other preliminary but essential matters such as support or child removal issues may be delayed to the maximum deadline, risking application of the legal cliche that "justice delayed is justice denied."

The national collection agency asserted several claims. The local farmer countered with several claims, including punitive damages, violation of federal collection law, and intentional infliction of emotional distress for consistent misapplication of payments. The record submitted on summary judgment included several depositions and multiple "fine print" exhibits. My calendar was full with travel, law and motion, extended hearings, research projects, and opinions to draft. I compared the summary judgment task to the farmer doing a harvest on his own. The harvest would have been ruined as it took me nearly five months to review the record and render a decision.

Rural Montana has a limited pool of stenographic reporters. District courts are courts of record. n36 Without a record, the courtroom proceedings grind to a halt. Substitute stenographic reporters are not readily available to the rural courts. Contract reporters often travel more than 100 miles to get to the court.

Some rural courts successfully use electronic reporting systems. It may be that with the close of several reporting schools, more and more courts will be going to this type of recording. However, these electronic systems still require an operator to regularly monitor the record. Further, they also do not provide the rural court with a real-time or readily available transcript. Timely production of this record is essential to various court operations.

The mental commitment is hotly contested. I issue detailed findings from the bench that include commitment to Warm Springs Hospital. The sheriff is prepared to transport the defendant 400 miles to Warm Springs for immediate treatment. The only problem--the findings are so detailed the county attorney wants a transcript before preparing the order of commitment.

[*212] Mental health and chemical dependency issues can heighten in areas of poverty and in the isolation of rural areas. Mental health professionals or dependency treatment providers are often miles from a county seat. The absence of community treatment professionals can contribute to delinquent, criminal, abusive, or erratic behavior. The logistics of arranging for and allowing the performance by distant service providers increase the court's workload.

Prior to arraignment, defense counsel sought a mental competency examination. It took several days to obtain approval from the Office of the State Public Defender. The approval requires examination 200 miles away. The earliest available appointment is a month away. Arraignment was postponed. On the date for arraignment, counsel explains that his client's transportation fell through. It took another six weeks for the examination to be completed and arraignment conducted.

Emotions in small communities can run deep, especially in family matters. At the same time, the way of life for many in these communities involves the ownership or possession of firearms and weapons. Courtroom security is the primary responsibility of the county sheriff. n37 However, the county sheriff can be short-staffed and have other responsibilities during court appearances such as prisoner transport. Older structures do not always present a secure facility. The rural court must constantly be attuned to these security concerns.

Courtroom security has improved over the past few years. The District Court Council had security audits performed by trained officers and coordinated the formation of local security committees in most county seats. n38 Only a portion of the funds needed to implement the audit recommendations have been allocated. n39 More security funding will be necessary as the local committees develop and upgrade security measures.

District courts operate with state funding, but many programs for diversionary, rehabilitative, assessment, and treatment purposes have other funding sources. The Cognitive Principles of Restructuring Therapy (CP&R) is a well-accepted program used to assist offenders in recognizing their own thinking errors and their lack of empathy for their victims. n40 It is offered in prison and in some of the more populated jurisdictions in Montana. n41 **[*213]** Without additional funds or training of probation officers to conduct the sessions, rural courts have no access to this valuable tool for rehabilitation. The additional funding is often not available to rural courts. Due to smaller tax or membership bases, the local sponsoring bodies have less revenue and higher staff turnover. The lack of basic services slows the judicial process.

The father's use of alcohol was placed at issue. The father was instructed to obtain a chemical dependency evaluation. The closest evaluator was 70 miles away at a mental health center. The evaluation was timely completed but the report was delayed due to emergency medical leave and staff shortages. The child custody proceeding was continued for several weeks.

Many rural courts have only one courtroom. Visiting judges may have to compete with a residential judge for use of a courtroom. The courtroom can also be used for justice and city court trials. Some rural courthouses even use the courtroom and other court facilities as meeting or polling places. It takes a patient and dedicated rural judge to work out the tangles.

I assumed jurisdiction over the felony jury trial. On my arrival, I found the jury room was the county commissioner's meeting room. During voir dire, I had the county commissioner clean the room of all materials.

The court facility will often have other limitations. Acoustic and structural problems can slow jury selection and trial presentation.

The witness is being cross-examined. Suddenly, the sounds of a tractor and truck filter through the windows. The windows are closed but the steam heat becomes almost unbearable. More frequent recesses are taken to assure the jury remains alert.

Older floor plans can make it difficult for security and confidential communication.

The county moves my chambers to make room for the prosecutor's office. The new chambers have no door and an open

area shared with the clerk's office. A bi-fold closet door is installed. I press for a solid door with a lock. The sheriff then asks to use my chambers to temporarily hold a prisoner as there is no other place to keep him secluded.

As stated above, attorneys are not always available to rural courts. Even when available, the attorney may have a conflict that prevents representation of a particular party. Most rural courts have no legal aid services in the community. Many litigants cannot afford the time and money to **[*214]** travel elsewhere for professional services. n42 The challenge for the rural court is to assure the self-represented litigant has access to legal information and material to present an understandable and timely case.

In this regard, grant programs are available and are used to contract attorneys for pro bono services. Local librarians have been instructed through the State Law Library on methods of accessing online services. Individual attorneys in some rural communities offer free or low-cost services to assist needy people. Some legal forms are available over the Internet. The Montana Supreme Court offers these forms on its website free of charge.

Resources are of little help to those unaware of their availability or to those lacking the basic knowledge to access them. Rural courts can educate the user regarding these resources only within ethical constraints.

III. Ethics

The recently revised Judicial Code of Ethics n43 contains specific and enforceable rules for a judge to uphold the independence, integrity, and impartiality of the judiciary and to avoid the appearance of impropriety. Personal and extrajudicial activity should minimize the risk of conflict with judicial obligations. Judges must perform their duties competently and diligently.

The court's competency and diligence, as noted above, are influenced by the court's access demands and resource limitations. Further, rural courts are generally located in small communities where close acquaintanceships can develop between the court, its staff, the attorneys, and the public generally being served. This familiarity generally promotes flexibility and allows the rural court to tailor justice to individual circumstances. But, it also presents situations that can encourage transgression of due process standards or question the integrity and independence of the court.

It is late afternoon. I am doing research in non-residential chambers. The clerk enters to advise me that petitioner's attorney has a last-minute oral request to continue a guardianship matter. I instruct the clerk to remain and take notes. Counsel explains the matter has just become contested and continuance is not opposed. When heard a month later, the petitioner testifies on **[*215]** cross-examination that her attorney met in chambers with the judge. I immediately have the clerk recite from her notes.

When local citizens observe the judge in their rural community, they may be more inclined to approach and make innocent remarks on a matter relevant to a pending case. To minimize risk of an ethical violation, the rural judge must proceed with caution at all social gatherings. Court staff must follow similar steps to avoid becoming an intermediary in ex-parte communication.

I am at the grocery store. In the bread aisle, I am approached by a relative who makes innocent reference to a paternity case set that week. I tell her to stop and that I am not allowed to hear such information unless properly presented by

pleading or in the courtroom. She complies. At commencement of the hearing, I inform the parties and their counsel about the nature of the contact.

Rural court judges are more likely to he presented with litigation where at least one party or a key witness will be known by the court. Automatic disqualification would mean that the court would never be able to operate in a close-knit rural community. The rural court often conducts an early review of pleadings to determine whether circumstances call for recusal.

A former trial judge advised me to use the "take to dinner" test. If I would take the litigant or key witness to dinner or be taken to dinner by the individual, I should recuse myself. At a recent trial, a witness was being asked about the date he had seen the defendant. The witness turned to me and said, "Judge, do you remember the day I waved to you and your wife as you walked on the highway early one morning? If you do, that was the date that I last saw the defendant." Fortunately, the date was not a disputed material fact.

Even review of the pleadings may prove insufficient to place the rural court on notice of an ethical concern. A district judge is prohibited by statute from sitting or acting in any case in which he has an interest or has a relationship to a party or member of a firm of attorneys of record by consanguinity or affinity within the third degree. n44 Rural courts want and expect attorneys or litigants to inform the court of potential statutory or ethical conflicts requiring recusal.

The dissolution action involves parties who have been separated for months. On the morning of trial, I am advised that my nephew is now dating one of the parties. I am prepared to discuss this matter when counsel for each party approach to advise they had just learned of the same. I offer to recuse myself but the parties decline and present a property settlement agreement and negotiated parenting plan.

[*216] Montana statute also entitles each adverse party upon payment of a minimal filing fee to one timely substitution of a district judge. n45 A substitution motion need not state cause for removal. When a rural court judge recuses himself or is timely substituted, he must find another willing to take the case. Often, the available judge is another rural court judge with a similar workload.

As a courtesy, parties are instructed to send copies of pleadings to any "outside" judge assuming jurisdiction in the rural court. This courtesy allows that judge to keep better track of cases "outside" a residential judicial district. Attorneys should still check with the court staff of the "outside" judge to comply with any other court management tools used by that judge.

IV. Cultural

Due to generations of working and living among each other, residents of Montana's rural communities are more likely to be closely connected. The rural court and attorneys must be more inclined to ask questions of prospective jurors and witnesses in the effort to search for the truth and to understand any bias or prejudice. When everyone knows either you or your family, there can be reluctance to speak out and reluctance to sit in judgment of another.

Sisters have been chosen to sit on the jury. During deliberations, the sisters get into an argument with each other. I allow one sister to "cool off" in the courtroom under observation of the bailiff. After this "cooling off" period, deliberations continue.

The remoteness of these communities often breeds a mix of independence and distrust of "outsiders." This independent culture is one of the greatest strengths of rural Montana. But it can represent one of the greatest challenges in administering justice in these communities.

Jurors or witnesses may become reluctant to bring forth their true feelings or beliefs during questioning by an attorney or in the presence of other community members. They may misstate or simply fail to recognize the significance of their role as the impartial trier-of-fact or as the factual witness. Court and counsel must recognize this rural culture for what it is and take appropriate action to assure fair presentation of the case.

The parties to the personal injury case are well known in the community. For the most part, the young attorney is merely getting a "yes" or "no" group response at voir dire. Occasionally, he will get the brief response "I can do it." At a recess, I invite both attorneys to my chambers to encourage more interaction with the jury panel.

[*217] Traditional values engrained over many generations and built into teachings can influence the search for truth.

The Hutterite colony is 15 miles from town. The excited son informed his father of a near collision with a parked vehicle located near the colony. The father called law enforcement and watched the movement of the vehicle from a distance. It became apparent the operator was under the influence of an intoxicating substance. Concerned for his son, the elder made several more calls to dispatch. At trial, the elder was reluctant to testify because it was against his religious beliefs to swear the oath as administered by the Clerk. He was allowed to affirm his testimony as the truth. His testimony included regret for placing the calls based on a strongly rooted belief in passivism.

The Native American culture plays a big part in rural courts. Seven Indian Reservations with their respective sovereign powers are located within or near many rural courts. n46 Montana also has Indian tribes without a reservation base. Native Americans will often appear before the court as litigants, witnesses, and jurors.

Close familial relations in Native American cultures extend through several generations. Deference is given based on age or position within a tribe. Community interest often prevails over individual interest. Respectful relationships become the center of many decisions. Lowering the eyes and speaking softly are signs of respect. It is common for Native Americans to be reluctant witnesses or to seek to be excused from the jury based on these and other traditional values that forbid the judging of another. Care must be taken to conduct legal proceedings in a manner that gives respect to this culture but yet assures a fair and impartial deliberation.

The Native American culture is particularly important in abuse-and-neglect proceedings involving Indian children. Rural courts and counsel that regularly practice in these courts must develop a working knowledge of the operations of tribal social services. Whenever an Indian child is removed from the home, the Indian Child Welfare Act (ICWA) n47 requires judges and parties to be aware of cultural practices in child-rearing. Availability of ICWA experts on these cultural practices is limited in part due to the required travel. The rural courts and litigants must accommodate through the use of audio-video conferencing or other technology.

Jurisdiction issues often arise between the rural courts and the tribal courts within the Indian Reservation. Most Native Americans residing within the Reservation are subject to tribal law but non-tribal members residing there (even Native Americans that are enrolled in another tribe) can **[*218]** be subject to state law. n48 This multi-jurisdictional component can be a source of frustration for attorneys and the rural court if clear and understandable boundaries are not maintained.

The rural court must be educated and informed regarding tribal court law and procedure. Domestic-relation or protection-order cases require an understanding of a tribal family law order. Various business relationships conducted pursuant to state law can be impacted by tribal court proceedings. An offender's criminal history may include tribal court sentencing. Parties may seek enforcement of tribal court judgments as a matter of comity. In many cases, the tribal court procedures can be less stringent than those of the state court.

V. Education

With work demands and staff shortages, the rural courts struggle to stay informed regarding court decisions or procedural and statutory changes. Periodic conferences help, but these conferences often involve additional travel and increased workload. Rural courts simply have little time to squeeze educational sessions into busy schedules.

The distance factor also means less contact between the rural courts. A judge of a rural court will often lack the collegial contact that can develop between judges working in the same community. Without this contact, the rural court has little exposure to helpful ideas or information regarding the organization and processes of similar courts.

A trained staff is a more efficient staff. However, funding, geographic location, and small size make it harder for staff members to receive this training. The judge, who bases the training on his or her own experiences, does most staff training.

VI. Efficiency Tips

For judicial efficiency, self-represented litigants and attorneys appearing in the rural courts of Montana should:

1. Familiarize themselves with all pleadings.

2. Where reasonably possible, do not wait until the last minute to present matters that impact the court's schedule.

3. Provide a copy of any motion or pleading to the residential chambers of the presiding judge.

[*219] 4. In motions seeking immediate relief, state what efforts have been made to contact the opposing party and any represented position by that party.

5. Use technology to help present your case. Test it in advance if there are any reliability concerns.

6. Be aware of document software used by the court and present proposed orders or documents using that software.

7. Present proposed orders with any motion seeking early relief, such as a motion for continuance.

8. Be open to mediating disputes.

9. Use pretrial conferences to seriously discuss the stipulation of facts not in dispute and recite those stipulated facts in a proposed pretrial order.

10. Present proposed findings of fact or conclusions of law on disks or by email attachment to the court's

administrative staff.

11. Present bench copies of exhibits.

12. Be sufficiently detailed in any pleading to inform the court on review of any potential ethical concerns.

13. Understand the culture of the area. Do not be afraid to ask questions of the unique cultural groups.

14. Where reasonably possible, advise the court in advance of any security issues, witness accommodations, or other concerns for in-court presentations.

15. If you are a new to the area, introduce yourself to the court's staff. Do not hesitate to ask questions or seek assistance from the clerk of court, judicial assistant, or from experienced local attorneys regarding a particular court practice.

VII. Conclusions

An understanding of court operations and a commitment to adequate funding are essential to the administration of justice in Montana's rural courts. Without this understanding and commitment, rural courts struggle to provide litigants with timely justice. The potential for error or violation of fundamental and statutory rights also increases.

The community-oriented people of rural Montana need legal representation readily available to them. Resident attorneys best fill the need for these independent thinkers, but the number of resident attorneys is shrinking. Established firms need to encourage and seek out associates. Governing bodies, law schools, and community members themselves need to encourage attorneys to locate their law practice in rural Montana. The incentives can include residing closer to family and friends, open areas, recreational opportunities, improved teacher-student ratios, and a quieter life.

Attorneys looking for a place to settle and practice law should know that the practice before rural courts can be as varied as any court in Montana. Attorneys that desire a solo practice should consider doing prosecution or public defender work while getting established. The defender offices frequently seek contracted counsel. Whatever the reason, the nature of **[*220]** practice can involve a quality of life that can only come from living in a rural area.

A 60-mile trip is truly only an hour away. The lack of traffic congestion makes any commute quicker and less stressful. Essential air, train, and bus services are generally available locally or within a few-hours drive. Local schools and their extracurricular activities are a focal point and become a very good way to become acquainted with members of the community. Social gatherings are as close as the corner cafe. Anyone willing to serve will find a community organization more than ready to accept them as a member. Neighbors become family.

The visitor's report n49 reads: X has applied to be full guardian and conservator of Y due to ongoing concerns that Y is unable to manage his own care. Y resides in (the local community). He has no children. He does have some elderly relatives in South Dakota and possibly Canada. However, Y is not in contact with them and feels his neighbors are his support ... All neighbors felt Y was a wonderful man. All also stated they would visit Y regularly if he were to move. This is a big concern for Y because his neighbors appear to be his family. Y does not talk about relatives, but often speaks highly of his "wonderful neighbors."

Residents usually hold Montana's rural courts in high regard and greatly appreciate attorneys and other professionals. The rewards of administering justice in rural Montana clearly outweigh the challenges. It is a wonderful place to call home.

Legal Topics:

For related research and practice materials, see the following legal topics:
Criminal Law & ProcedurePreliminary ProceedingsArraignmentsProcedure & ScopeGovernmentsCourtsClerks of CourtGovernmentsCourtsCourt Personnel

FOOTNOTES:

n1. Alaska - 656,425 sq. miles; Texas - 268,601 sq. miles; California - 163,707 sq. miles; Montana - 147,046 sq. miles. U.S. Census Bureau, Statistical Abstract of the United States: Land and Water Area of States and Other Entities, http://www.census.gov/compendia/statab/tables/09s0344.pdf (accessed Feb. 20, 2009).

n2. Montana's estimated 957,860 population is less than 0.32% of the nation's population. Approximately 66% of Montana's population (634,610/957,860) resides in the eight counties of Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis & Clark, Ravalli, and Silver Bow. U.S. Census Bureau, 2007 Population Estimates. U.S. Census Bureau, Census *2000 Public Law 94-171* File: Total Population, Population Density, and Land Area for Montana Counties, http://www.census.gov/compendia/ statab/tables/09s0013. pdf (last updated Mar. 21, 2001).

n3. Alaska: 683,478 population /656,425 sq. mile; Wyoming: 522,830 population /97,818 sq. mile; Montana 957,861 population /147,046 sq. mile. U.S. Census Bureau, Resident Population--States: 1980-2007, http://www.census.gov/compendia/statab/tables/09s0012.pdf (accessed Feb. 20, 2009).

n4. Rhode Island is 1,545 sq. miles. Id. Only six counties are smaller than Rhode Island: Deer Lodge County at 737 sq. miles, Wibaux County at 889 sq. miles, Treasure County at 979 sq. miles, Golden Valley County at 1,175 sq. miles, Liberty County at 1,420 sq. miles, and Wheatland County at 1,423 sq. miles. Id.; U.S. Census Bureau, Census *2000 Public Law 94-171* File: Total Population, Population Density, and Land Area for Montana Counties, http://www.ceic.mt.gov/C2000/PL2000/PLcountyarea.pdf (last updated Mar. 21, 2001); U.S. Census Bureau, Statistical Abstract of the United States: Land and Water Area of States and Other Entities, http://www.census.gov/compendia/statab/tables/09s0344.pdf (accessed Feb. 20, 2009).

n5. Beaverhead County at 5,542 sq. miles, Phillips County at 5,140 sq. miles, Rosebud County at 5,012 sq. miles, Big Horn County at 4,994 sq. miles, Valley County at 4,921 sq. miles, Garfield County at 4,668 sq. miles, Fergus County at 4,339 sq. miles, Blaine County at 4,226 sq. miles, and Chouteau County at 3,973 sq. miles.

U.S. Census Bureau, Census *2000 Public Law 94-171* File: Total Population, Population Density, and Land Area for Montana Counties, http://www.ceic.mt.gov/C2000/PL2000/PLcountyarea.pdf (last updated Mar. 21, 2001).

n6. *Mont. Code Ann. § 3-5-101* (2007).

n7. Id. at § 3-5-102.

n8. Montana's 16th Judicial District (Custer, Carter, Fallon, Garfield, Powder River, Rosebud, and Treasure counties - 22,699 sq. miles), 17th Judicial District (Blaine, Phillips, and Valley counties - 14,287 sq. miles), 7th Judicial District (Dawson, McCone, Prairie, Richland, and Wibaux counties - 9,726 sq. miles), 9th Judicial District (Glacier, Pondera, Teton, and Toole counties - 8,804 sq. miles), 12th Judicial District (Hill, Liberty, and Chouteau counties - 8,289 sq. miles), 10th Judial District (Fergus, Judith Basin, and Petroleum counties - 7,863 sq. miles), 14th Judicial District (Musselshell, Golden Valley, Meagher, and Wheatland counties - 6,857 sq. miles) and 15th Judicial District (Sheridan, Daniels, and Roosevelt counties - 5,459 sq. miles) cover a contiguous area of 83,984 square miles. U.S. Census Bureau, Census *2000 Public Law 94-171* File: Total Population, Population Density, and Land Area for Montana Counties, http://www.ceic.mt.gov/C2000/PL2000/PL countyarea.pdf (last updated Mar. 21, 2001). Maryland is 12,407 sq. miles and New England (consisting of contiguous states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut) covers 69,825 sq. miles for a total of 82,232 sq. miles. U.S. Census Bureau, Statistical Abstract of the United States: Land and Water Area of States and Other Entities, http://www.census.gov/compendia/statab/tables/09s0344.pdf (accessed Feb. 20, 2009).

n9. These judicial districts include the 3rd (Deer Lodge, Granite, and Powell counties), 5th (Beaverhead, Jefferson, and Madison counties), 6th (Park and Sweet Grass counties), 7th Dawson, McCone, Prairie, Richland, and Wibaux counties), 9th (Glacier, Pondera, Teton, and Toole counties), 10th (Fergus, Judith Basin, and Petroleum counties), 12th (Hill, Liberty and Chouteau counties), 14th (Musselshell, Golden Valley, Meagher, and Wheatland counties), 15th (Sheridan, Daniels, and Roosevelt counties), 16th (Custer, Carter, Fallon, Garfield, Powder River, Rosebud, and Treasure counties), 17th (Phillips, Valley, and Blaine counties), 19th (Lincoln County), 20th (Lake and Sanders counties), and 22nd (Big Horn, Carbon, and Stillwater counties). *Mont. Code Ann. § 3-5-101.*

n10. The 12th and 17th judicial districts are located adjacent to each along an area of northcentral Montana that covers approximately 23,000 square miles. The main travel corridor, U.S. Highway 2, stretches approximately 265 miles from east to west. Although their residential chambers are 90 miles apart, each judge is the closest district judge.

n11. Mont. Const. art. II, § 16.

n12. Mont. Const. art. VII, § 4; *Mont. Code Ann.§§3-5-301* to *3-5-303*.

n13. Mont. Const. art. II, § 16.

n14. Single county judicial districts must be open every business day; multi-county judicial districts must fix a term of court in each county at least four times a year. *Mont. Code Ann. § 3-5-401*.

n15. Mont. Const. art. II, § 16.

n16. The number of days varies among multi-county courts as some judicial districts' residential workload is essentially divided equally among all the counties in that district. Other multi-county courts may have the bulk of their residential workload in one county.

n17. National Center for State Courts: Court Services Division, Montana District Courts Judicial Workload Assessment Study, December, 2006, http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=942 (accessed Feb. 20, 2009).

n18. Those rural court judges with assigned state vehicles are generally precluded by state policy from having non-state employee passengers. See Admin. R. Mont. 2.6.204 (2001); St. Vehicle Use, Admin. Pol. 770, Mont. Jud. Branch (revised Oct. 28, 2008).

n19. Most medical providers are in the urban areas. Montana's rural areas involve agricultural operations with seasonal demands such as calving, seeding, and harvest. Rural Montana has many small businesses that depend heavily on seasonal revenues and have few or no employees.

n20. Mont. Const. art II, § 24.

n21. *Mont. Code Ann. § 41-5-110.*

n22. *Mont. Code Ann.§§53-21-122(2), 53-21-127(1).*

n23. *Mont. Code Ann.§§40-15-202(1), 41-3-432(1).*

n24. Fort Peck Reservoir has more than 50 kinds of fish and is Montana's largest body of water. The lake is 134 miles in length and has a maximum depth of 220 feet when full. There are over 1,520 miles of shoreline, longer than the California coast. The reservoir was created from 1933 through 1937 by constructing a 3.8 mile-long dam across the Missouri River. Surrounding this large expanse of water is the Charles M. Russell (CMR) National Wildlife Refuge which provides over one million acres of public land for fishing, hiking, hunting, camping, bird-watching, and other outdoor recreation. Montana Big Sky Country Official State Travel Information Site, Fort Peck Lake Reservoir and Recreation Area, http://visitmt.com/categories/moreinfo.asp?SiteID 1&IDRRecordID=2181 (accessed Feb. 20, 2009).

n25. The Office of the State Public Defender contracts with attorneys to cover many rural courts. *Mont. Code Ann. § 47-1-215.* These contract attorneys can travel over 300 miles for court appearances (for example, in the 17th Judicial District, contract attorneys travel from Havre to Glasgow, a distance of 165 miles, one way).

n26. 2001 Mont. Laws ch. 585.

n27. The two-way audio-video technology, often known by its provider's name, Vision Net, allows instant sight and sound communications.

n28. An accused has the right to confront witnesses against him. U.S. Const. amend. VI; Mont. Const. art. II, § 24.

n29. See *Mont. Code Ann.§§46-7-101* (initial appearance), 46-9-206 (bail hearing), 46-10-204 (preliminary examination), 46-12-201 (arraignment), 46-12-211, (plea agreement), 46-16-105, (guilty or nolo contendere plea), 46-16-123, 46-18-102, and 46-18-115, (verdict or sentencing), 46-16-229 (child witness testimony on certain findings).

n30. District Court Council, Minutes of January 18, 2008 Meeting at the State Law Library Conference Room, Helena, MT, January 18, 2008, http://www.courts.mt.gov/dcourt/dcc/min/2008%20Minutes/Jan%20% 202008 %20%20minutes.doc (accessed Feb. 20, 2009).

n31. National Center for State Courts: Court Services Division, Montana District Courts Judicial Workload Assessment Study, December, 2006 i-iv, http://contentdm.ncsconline.org/cgi-bin/showfile. exe?CISOROOT=/ctadmin&CISOPTR=942 (accessed Feb. 20, 2009) (finding no distinction between staffing in 22 judicial districts other than to note two special masters in the Fourth Judicial District).

n32. These minimum staffing levels are not in place in the 3rd, 6th, 7th, 14th, 15th, 16th, 17th, 19th, and 20th judicial districts. Proposals are before the 2009 Montana Legislature to address staff deficiency in the 3rd, 7th, 15th, and 17th judicial districts.

n33. "Workload assessment models need to be viewed in context with other consideration, including ... more qualitative, court-specific factors that may affect the demand for judicial or staff resources differently from district to district ... because a quantitative model often does not account for such qualitative factors, administrators and policymakers must be aware of the limitations of any model in defining exact resource demand and allocation." National Center for State Courts: Court Services Division, Montana District Courts Judicial Workload Assessment Study, December, 2006 iv, http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=942 (accessed Feb. 20, 2009).

n34. For simplification purposes, the assessment model was based on a time study for case-specific and non-case-specific workload without distinguishing whether staffing was available to perform any of that workload. National Center for State Courts: Court Services Division, Montana District Courts Judicial Workload Assessment Study, December, 2006 iii, 2-6, http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=942 (accessed Feb. 20, 2009).

n35. *Mont. Code Ann.§§3-5-113(1)(a)*, *3-5-122(2)*, *3-5-124* to *3-5-126*, *41-3-422(15)*, *41-5-201(3)*.

n36. Id. at § 3-1-102.

n37. Id. at § 7-32-2121(5).

n38. Court Security Advisory Group, Recommendation Approved by the District Court Council, October 12, 2005, http://www.montanacourts.org/dcourt/dcc/safety recommend DCC.doc (accessed Feb 20, 2009).

n39. Only $ 300,000 funded by the 2007 Legislature of the $ 513,710 need recorded in the District Court Council's Security Spreadsheet and Final Report. District Court Council, Court Inspection Equipment Needs, http://courts.mt.gov/dcourt/dcc/security/Court%20Security%20Spreadsheet.pdf (accessed Feb 20, 2009).

n40. See National Institute of Corrections, Cognitive/Behavioral Strategies to Changing Offender Behavior (Training Broadcast), http://nicic.gov/Library/014794 (accessed Feb 21, 2009); see also D.B. Wilson, L.A. Bouffard & D.L. Mackenzie, A Quantative Review of Structured, Group Oriented Cognitive-Behavioral Programs for Offenders, 32 Crim. Just. & Behav. 172 (2005).

n41. Montana Department of Corrections, Offender Treatment Programs: Policy DOC 5.4.1, http://www.cor.mt.gov/resources/POL/5-4-1.pdf (accessed March 18, 2009); Counseling and Correctional Services, Inc., Warm Springs Treatment and Change (WATCh) Program Community, http://www.ccscorp.com/watch2.htm (updated Feb. 3, 2009).

n42. The median income level in the State of Montana is approximately 27.2% lower than the median household income in the United States. The top ten Montana counties in terms of poverty rate are all within the area of rural courts (Roosevelt, Big Horn, Blaine, Glacier, Golden Valley, Petroleum, Rosebud, Garfield, Judith Basin and Chouteau counties). The Native American ethnicity group holds the highest poverty rate with 38.4% of residents living in poverty. U.S. Census Bureau, Poverty Status in 1999 by Census Tracts with 20 Percent or More in Poverty: Montana, http://blueprod.ssd.census.gov/hhes/www/poverty/20percent/montana2.html (accessed Feb. 20, 2009).

n43. Mont. Code Jud. Ethics R. 1.1 to 1.3.

n44. *Mont. Code Ann. § 3-1-803.*

n45. Id. at§§3-1-804, 25-1-201(p).

n46. Blackfeet, Northern Cheyenne, Flathead, Crow, Rocky Boy, Fort Belknap, and Fort Peck.

n47. *25 U.S.C.§§1901*-1963 (2006); *Mont Code Ann. § 41-3-109.*

n48. Tribal courts cannot prosecute non-Indians for crimes committed on a reservation. *Oliphant v. Suquamish Indian Tribe, 453 U.S. 191 (1978).* States may have jurisdiction over offenses on a reservation between non-Indians, but federal courts have jurisdiction for offenses by a non-Indian against an *Indian. Williams v. U.S., 327 U.S. 711, 714 (1946).* These principles are discussed well in *Mont. v. Greenwalt, 663 P.2d 1178 (Mont. 1983).* See also Scott W. Wilson, Criminal Jurisidction in Montana Indian Country, *47 Mont. L. Rev. 513 (1986).*

n49. Filed under *Mont. Code Ann. § 72-5-315.*

EXHIBIT 20
DATE 2-16-05
HB 643

My name is Orrin Tiberi; I am a high school senior here in Helena. I have come to speak to you today to urge you to support House Bill 643.

House Bill 643 will:
1) Save lives
2) improve public health
3) strengthen the business climate

Smoke free public places help protect our kids, seniors and hospitality workers from deadly tobacco smoke that causes the prematurely death up to 65,000 Americans, 175 Montanans, per year who have never smoked but have been exposed to secondhand tobacco smoke.

I know several classmates that have asthma and they struggle to find jobs that will not jeopardize their health.

> secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

I do have a choice when it comes to which restaurants I visit, but I don't have a choice when it comes to my workplace. I believe every person has the right to a safe working environment.

> a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25% to 50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.
>
> smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke;
>
> Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.

When considering this bill, please think of my classmates, coworkers and comrades. We urge you to please support HB643 The Montana Tobacco Free Schools & Smoke free Public Places Act

EXHIBIT 21
DATE 2-16-05
HB 643

For years, the cigarette companies have been adamantly opposing smoke-free work place laws by arguing that they reduce smokers' freedoms. But the companies' own internal documents, disclosed in the tobacco lawsuits, show that the cigarette companies actually oppose smoke free laws because they raise awareness of the dangers of secondhand smoke and reduce smoking levels, thereby reducing the companies' sales and profits. While the cigarette companies argue that efforts to "accommodate" both smokers and non-smokers are preferable to smoke free laws, they are really just trying to protect their bottom line, no matter what harm that causes to the health of both smokers and non-smokers alike.

In The Industry's Own Words

• Philip Morris's own research shows that prohibiting smoking in the work place not only reduces consumption but also increases quit rates. A 1992 memo summarizing these findings states: "Total prohibition of smoking in the workplace strongly affect industry volume. Smokers facing these restrictions consume 11%-15% less than average and quit at a rate that is 84% higher than average."[1] The memo goes on to state that, "If smoking were banned in all workplaces, the industry's average consumption would decline 8.75-10.1% from 1991 levels and the quitting rate would increase 74% (e.g., from 2.5% to 4.4%)."[2]

Another 1992 Philip Morris memo discusses the impact of workplace bans, "I have attached a copy of the 'workplace restrictions' memo that was issued prior to the one that we discussed. Here, we determined that total workplace bans are significantly more detrimental to the industry than moderate workplace restrictions. Any policy that seeks accommodation is, therefore, eminently correct."[3]

A 1994 draft speech written by Ellen Merlo (who is currently a senior vice president at Philip Morris) discusses the various threats facing the tobacco industry and simply states, "The second major threat we face is from smoking bans. If smokers can't smoke on the way to work, at work, in stores, banks, restaurants, malls and other public places, they are going to smoke less. Overall cigarette purchases will be reduced and volume decline will accelerate."[4]

A 1994 speech on Philip Morris USA's "most important priorities for 1994 and 1995" discusses the importance of their accommodation program, "The immediate implications for our business are clear: if our consumers have fewer opportunities to enjoy our products, they will use them less frequently and the result will be an adverse impact on our bottom line."[5]

A 1994 Philip Morris budget document states: "Currently 47 states have some form of smoking restrictions. Smoking is restricted in private workplaces in 19 states; 28 states restrict smoking in restaurants. This year alone 18 states and 269 localities passed smoking restrictions. Measures are still pending in 6 states and 165 localities. Smoking restrictions have been estimated, this year alone, to have decreased PM profits by $40 million."[8]

And yet another Philip Morris internal document recognizes that the "Financial impact of smoking bans will be tremendous - three to five fewer cigarettes per day per smoker will reduce annual manufacturer profits a billion dollars plus per year."[9]

[1] Heironimus, J. Impact of Workplace Restrictions on Consumption and Incidence. Philip Morris. January 22, 1992. Bates No.: 2023914280. URL: http://tobaccodocuments.org/landman/2023914280-4284.html.
[2] Heironimus, J. Impact of Workplace Restrictions on Consumption and Incidence. Philip Morris. January 22, 1992. Bates No.: 2023914280. URL: http://tobaccodocuments.org/landman/2023914280-4284.html.
[3] Heironimus, J. Workplace Restrictions. Philip Morris. April 16, 1992. Bates No.:2023914279. URL: http://tobaccodocuments.org/pm/2023914279.html.
[4] Merlo, E. Untitled Draft Speech. Philip Morris. January 14, 1994. Bates No.: 2044333753/3836. URL: http://tobaccodocuments.org/pm/2044333814-3836.html.
[5] Walls, T. CAC Presentation#4. Philip Morris. August 8, 1994. Bates No.: 2041183751. URL: http://tobaccodocuments.org/pm/2041183751-3790.html.
[8] Corporate Affairs 1994 Budget Presentation. Philip Morris. October 21, 1993. Bates No.: 2045521070 – 2045521111. URL: http://tobaccodocuments.org/pm/2045521070-1111.html.
[9] A Smokers' Alliance: Draft. Philip Morris. August 1, 1993. Bates No.: 2025771934 - 2025771937. URL: http://tobaccodocuments.org/pm/2025771934-1995.html.

Tribeni

EXHIBIT 22
DATE 2-16-05
HB 643

LINDA LEE
2910 WOODLAND AVE.
MISSOULA, MT 59802
(406) 549-2120

February 16, 2005

Dear Representative Becker and Members of the House Human Services Committee:

My name is Linda Lee and I have worked in tobacco prevention for most of the last seven years. Today, I am "off the clock" and representing myself and my friends and relatives who have died from or are currently suffering from tobacco related illness.

You will hear plenty of information today about the science and the health effects of secondhand tobacco smoke, so I will not repeat that important information. Instead, I would like to tell you a short, but revealing story.

I don't think anyone in Montana aspires for our state to be like California, most of us are appalled at any reference of our state being influenced by that huge state to our west with a population and reputation so large their influence is felt around the country. Nonetheless, this story is about California.

My younger sister lived in California for the bulk of her four children's lives. They range in ages from 5 to 13. Just last year, the family moved from California to Arizona.

California has a reputation for having one of the most comprehensive tobacco prevention programs in the country. But, when it comes to tobacco prevention, what most of us know is that it was the first state to go completely smoke free. So, my sister's kids grew up not only with excellent tobacco prevention programs in their schools, but also they have experienced a cultural norm that treats tobacco smoke as the toxic substance it is and one to which no person should be exposed.

Soon after the family moved to Arizona, my sister told me of an experience they had going into a restaurant in Phoenix. She, her husband and the four kids enter the building and stand at the reception area and immediately, they can smell smoke. Before my sister can stop them, her three oldest children begin to make loud comments about the people they see smoking in the establishment. The kids are young and they are saying things like "Yuck Mom! Look at those people smoking over there!" "Mom, are we really going to eat here? This is gross!" "Don't they know they are not supposed to smoke in here!?"

Well, by the time my sister got the kids under control, most of the folks in the restaurant had heard her children's outcries. She was embarrassed and ushered her family out to find a place that was smoke free. As she tells the story now, though, she tells it with pride in her voice. My sister realizes that between the California law prohibiting tobacco use in public places, the great tobacco prevention program in California and her own attitude about tobacco, her children will not only never smoke, they are appalled at anyone who would smoke and expose others to the toxins.

This is a simple story of cultural norms. In California, they have the lowest tobacco use rate in the country. Their citizens are protected from secondhand tobacco smoke and their children have a dramatically lower rate of tobacco use. This is what we want for our children and families here in Montana, so we begin to see fewer and fewer people impacted by tobacco.

Thank you for your time and attention,
Linda Lee

BLACKFEET NATION

PO BOX 850 BROWNING, MONTANA 59417
(406) 338-7521 FAX (406) 338-7530

EXHIBIT 23
DATE 2-16-05
HB 643

EXECUTIVE COMMITTEE

William "Allen" Talks About, Chairman
Patrick "Pat" Thomas, Vice-Chairman
Fred Guardipee, Secretary
Joe A. Gervais, Treasurer

BLACKFEET TRIBAL BUSINESS COUNCIL

William "Allen" Talks About
Betty N. Cooper
Fred Guardipee
Hugh Monroe
Earl Old Person
Patrick "Sam" Schildt, Jr.
Jay St. Goddard
James St. Goddard
Patrick "Pat" Thomas

February 16, 2005

Health and Human Services Committee
59th Legislative Session
Helena, MT 59620

Background

The Blackfeet live on a reservation land base 50 by 75 miles square located along the rocky mountain front and U.S./Canadian border. There are 15,670 enrolled Blackfeet members. The Montana Tobacco Use Prevention program provides $80,000.00 per year to the Blackfeet Tobacco Program for fiscal years 2004 and 2005. The Blackfeet Tobacco Prevention program since July 2000 has provided culturally based tobacco prevention services to support tobacco policy development, and activities to prevent youth initiation to the use of tobacco products, and promotes cessation services. The Blackfeet TUPP services integrate Blackfeet sacred Pitsistiman/Pistakaan (tobacco) teachings and ceremonial governance of Blackfeet values combined with health education commercial tobacco prevention curriculums to formulate a culturally base prevention strategy. The principles of Akak'stiman (the traditional law-making process) govern the composition of all policy, ordinances and activities of the Blackfeet Tobacco Prevention Program that operates under the authority of the Blackfeet Tribal Business Council.

Community capacity building activities are designed to expand the opportunities for members of the Blackfeet Reservation community to receive traditional teachings of Pitsistiman/Pista'xkaan protocol as a method of developing culturally based refusal skills to commercial tobacco products use and addiction. The culturally based policy efforts are organized to reflect the governing principles of Akak'stiman, the traditional ceremonial based law-making practice of the Blackfeet. Akak'stiman can be characterized in the context of tobacco responsibility as the original Blackfeet tobacco control mechanism. Adherence to Akak'stiman principles is necessary when addressing the health morbidity and mortality factors, which have arisen among the Blackfeet since the introduction of tobacco for profit products. During fiscal years 2004 and 2005 all activities reflect the program goal of fostering a greater understanding of the principles of designing culturally based commercial tobacco control policies and fortifying the sacred use of Pista'xkan/Pitsistiman protocol as prevention strategy.

The Blackfeet Tobacco Program activities are designed to support the return to wellness for all families. The health education tobacco initiatives of the Blackfeet Program address the disparities in tobacco related morbidity and mortality among Blackfeet families by pursuing the development of Clean Indoor Air policies, development of cessation services, and conducting youth prevention activities.

Concerning HB 643 "An Act Prohibiting Smoking in all public schools and in all places where the public is free to enter." The following feedback is provided to the committee:

1. Current language:

Section 4 (4) the prohibition in subsection (1) does not apply to the following Places, whether or not the public is allowed access to those places:
(f): a room or other space used for bona fide, traditional, American Indian Ceremonial purposes in connection with the practice of a traditional Indian religion.

Opinion: Implies religious freedom restriction on American Indians religious rights, and practice be defined to a spatial area.

Example of language to acknowledge the unique relationship of the ceremonial use of tobacco by American Indians:

(f) American Indians religious practices in accordance with the American Indian Religious Freedom Act, Public Law 95-341 (1978), Public Law 103-344 (1994).

Submitted By: Lori New Breast 3/16/05

Lori New Breast Date 16, 2005

Contact: Lori New Breast, Director Blackfeet Tribe Tobacco Prevention, 338-2413/450-3093.

Information of Guiding Principles of the Blackfeet Tribe Tobacco Prevention Program

Two tobacco ways:

Blackfeet ceremonial tobacco use **honors the Creator and helps our families. The gift of sacred tobacco was given to the Blackfeet as the chief head offering to the Creator and is central to the Blackfeet way of life. Ceremonial use is our original relationship to sacred tobacco.**

Commercial tobacco use **means chewing or smoking cigarettes that are manufactured to cause addiction and sold for profit.** ***Commercial tobacco*** **products contain poisonous chemicals, carcinogens (cancer causing agents), sugars, salts, nuclear waste and pesticides that cause illnesses, tooth and gum diseases, cancers and deaths in our families.**

EXHIBIT 24
DATE 2-16-05
HB 643

Informational Testimony on HB 0643

By Todd Harwell, MPH, Chief, Chronic Disease Prevention and Health Promotion Bureau, Montana Department of Public Health and Human Services

Secondhand smoke (SHS) is a major public health issue for Montana. Briefly, I would like to address the following questions. "Is SHS harmful?" "How many Montanans are exposed to SHS in their work place? "What do Montanans think about SHS?" and "What impact do smoke free laws have on businesses?"

Is SHS harmful? Yes. Secondhand smoke is categorized as a Group A (human) Carcinogen – a substance known to cause cancer in humans. There is no safe level of exposure for Group A toxins.(1) More than 50 compounds in tobacco smoke are known carcinogens. (2) Secondhand smoke is the third leading cause of preventable death in this country, killing approximately 53,000 non-smokers in the U.S. each year. (3) In Montana, approximately 170 people die each year from exposure to SHS. (4, 5) Exposure to SHS causes lung and nasal sinus cancer, heart disease, and sudden infant death syndrome. Serious impacts of SHS on children include asthma induction and exacerbation, bronchitis and pneumonia, middle ear infection, chronic respiratory symptoms, and low birth weight. (2, 6)

How many Montanans are exposed to SHS in their work place? The Department of Public Health and Human Services conducted a survey of a random sample of Montana adults in 2004. The findings indicate that one in ten Montana workers were exposed to SHS on their job in the past seven days.

What do Montanans think about SHS? Overall, Montanans are very knowledgeable about the hazards of SHS. Over 90% are aware that SHS causes heart disease, lung, and respiratory problems in children. Fewer Montanans were aware that SHS causes sudden infant death

Table. Peer-reviewed published studies assessing the impact of smoke-free policies on restaurant, bar, and hotel revenues.

Study	Location	Outcome measure(s)	Findings
CDC. MMWR 1995	West Lake Hill, Texas.	Restaurant sales before and after implementation of smoke-free ordinance.	Ordinance had no adverse impact on restaurant sales.
Glantz, SA, et al. Am J Public Health 1997	15 cities with smoke-free ordinances. 5 cities and 2 counties with smoke-free bar ordinances.	Retail sales for eating and drinking establishments.	Smoke-free ordinances did not affect restaurant or bar revenues.
Sciacia JP, et al. Am J Health Promo 1998	Flagstaff, Arizona (ordinance) and remainder of Arizona (no ordinance).	Restaurant sales.	No differences in restaurant sales in Flagstaff prior to or after implementing the ordinance.
Hyland A, et al. J Public Health Manag Pract 1999	New York City (ordinance) and New York State (no ordinance).	Taxable sales for eating and drinking establishments. Taxable sales for hotels.	Increased sales for eating and drinking establishments (NYC). Increased hotel revenues (NYC). Decline in sales in eating and drinking establishments (New York State). Increase in hotel revenues (New York State).
Hyland A, et al. J Public Health Manag Pract	New York City (ordinance) and New York State (no ordinance).	Number of restaurants and restaurant jobs.	Two years after implementation of the ordinance the number of restaurant jobs increased by 18% in NYC versus 5% in the rest of New York State. Rate of growth of new restaurants comparable between NYC and New York State.
Bartosch WJ, et al. J Public Health Manag Pract 1999	Massachusetts.	Taxable meal revenues in towns with and without ordinances.	Local smoke-free ordinances had no effect on restaurant revenues.
Glantz, SA, et al. JAMA 1999	Three states and six cities with smoke-free ordinances (California, Utah, Vermont, Boulder, Colorado, San Francisco, California, Flagstaff, Arizona, Mesa, Arizona, New York City).	Hotel revenues and tourism rates before and after implementation of smoke-free ordinances.	Significant increase in hotel revenue in 4 locations and no significant change in 5 locations. No change in the ratio of hotel fraction to total revenues. International tourism was either unaffected or increased after implementation of ordinances.
Glantz, SA. Tob Control 2000	California.	Total revenues for eating and drinking establishments licensed to serve liquor.	Ordinance had no impact on revenue for eating or drinking establishments with liquor licenses.
Bartosch, WJ, et al. Tob Control 2002	Massachusetts.	Taxable meal revenues in towns with and without smoke-free ordinances.	Ordinances had no adverse effect on restaurant sales.
CDC. MMWR 2002	El Paso, Texas.	Restaurant and bar revenues before and after implementation of smoke-free ordinance.	Ordinance had no impact on restaurant or bar revenues.

syndrome (62%). Over three-fourths of Montana adults (76%) believe that smoking should not be allowed in any work area.

What impact does smoke free laws have on business? Numerous peer-reviewed studies have been published examining the impact of smoke free laws on business including restaurants, bars, hotels, and tourism (Table). The findings from these studies are clear - smoke free laws either have no impact or a positive impact on business revenues.

In summary, SHS is a major health hazard for all Montanans. Many Montanans are exposed to SHS every day, and published studies clearly indicate no adverse impact on businesses.

References:

1. Report on Carcinogens, Tenth Edition; U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, December 2002. Available at: http://ehp.niehs.nih.gov/roc/toc10.html

2. National Cancer Institute, "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency." Smoking and Tobacco Control Monograph 10, 1999. Available at: http://cancercontrol.cancer.gov/tcrb/monographs/10/

3. Glanz, S.A. & Parmley, W., "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry," *Circulation,*1991; 83(1): 1-12.

4. Taylor, A., Johnson, D. & Kazemi, H., "Environmental Tobacco Smoke and Cardiovascular Disease," *Circulation*, 1992; 86: 699-702.

5. Campaign for Tobacco Free Kids. Available at http://tobaccofreekids.org/reports/settlements/toll.php?StateID=MT

6. California Environmental Protection Agency, "Health Effects of Exposure to Environmental Tobacco Smoke," 1997.

Amendments to House Bill 643
Introduced Copy (White)

Requested by the Department of Public Health and Human Services

For the House Human Services Committee

1. Page 6, line 7.
Following: "(e) a"
Strike: "private or semiprivate room"
Insert: "designated area where smoking is permitted"

2. Page 6, lines 8 and 9.
Following: "chapter 5,"
Strike: "that" on line 8 through "permitted" on line 9

-End-

Prepared by: Department of Public Health & Human Services, Lisa Swanson, Staff Attorney, Telephone 444-5904
February 15, 2005 (4:35 p.m.)

EXHIBIT 25
DATE 2-16-05
HB 643

Discover Diplomacy. The New

Adver

In Barrooms, Smoking Ban Is Less Reviled

By JIM RUTENBERG and LILY KOPPEL
Published: February 6, 2005

Back in 2002, when the City Council was weighing Mayor Michael R. Bloomberg's proposal to eliminate smoking from all indoor public places, few opponents were more fiercely outspoken than James McBratney, president of the Staten Island Restaurant and Tavern Association.

He frequently ripped Mr. Bloomberg as a billionaire dictator with a prohibitionist streak that would undo small businesses like his bar and his restaurant. Visions of customers streaming to the legally smoke-filled pubs of New Jersey kept him awake at night.

Asked last week what he thought of the now two-year-old ban, Mr. McBratney sounded changed. "I have to admit," he said sheepishly, "I've seen no falloff in business in either establishment." He went on to describe what he once considered unimaginable: Customers actually seem to like it, and so does he.

By many predictions, the smoking ban, which went into effect on March 30, 2003, was to be the beginning of the end of the city's reputation as the capital of grit. Its famed nightlife would wither, critics warned, bar and restaurant

Enlarge This Image

Stephanie Keith for The New York Times
Smoking outside Donovan's Pub in Queens.

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Es to Open NYT

businesses would sink, tourists would go elsewhere, and the mayor who wrought it all would pay a hefty price in the polls. And then there were those who said that city smokers, a rebellious class if ever there was one, simply would not abide.

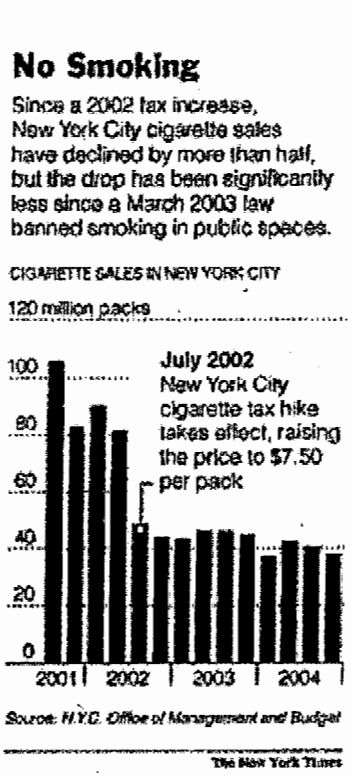
But a review of city statistics, as well as interviews last week with dozens of bar patrons, workers and owners, found that the ban has not had the crushing effect on New York's economic, cultural and political landscapes predicted by many of its opponents.

Employment in restaurants and bars, one indicator of the city's service economy, has risen slightly since the ban went into effect, as has the number of restaurant permits requested and held, according to city records, although those increases could be attributed in part to several factors, including a general improvement in the city's economy.

City health inspectors report that 98 percent of bars and restaurants are in compliance with the rules, though some critics question those statistics. Wrath at Mr. Bloomberg, at least pertaining to the smoking ban, seems to be abating.

There are still those cursing the ban as an affront to their civil liberties, and some bar and restaurant owners say that it has undoubtedly caused a decline in business. City officials say they doubt that contention, pointing to data from the first year of the ban showing that restaurant and bar tax receipts were up 8.7 percent over the previous year's. They said they were still waiting for more detailed and current data from the state.

Go to Complete List


No Smoking
Since a 2002 tax increase, New York City cigarette sales have declined by more than half, but the drop has been significantly less since a March 2003 law banned smoking in public spaces.
CIGARETTE SALES IN NEW YORK CITY
120 million packs
100
80
60
40
20
0
July 2002
New York City cigarette tax hike takes effect, raising the price to $7.50 per pack
2001
2002
2003
2004
Source: N.Y.C. Office of Management and Budget
The New York Times

Stephanie Keith for The New York Times

Kate Bly and her husband, Joe, smoked in a tent at the Bohemian Hall and Beer Garden in Queens.

Photo: Me and Lear

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But a vast majority of bar and restaurant patrons interviewed last week, including self-described hard-core smokers, said they were surprised to find themselves pleased with cleaner air, cheaper dry-cleaning bills and a new social order created by the ban.

All of this comes as great relief to Dr. Thomas R. Frieden, commissioner of the city's Department of Health and Mental Hygiene, who took his job on a promise from the mayor that the smoking ban would be given priority. "It was not a pleasant time," he said of the initial uproar over the ban. "There was a myth that this was very unpopular."

Dr. Frieden credits the apparent success of the new smoking rules here with encouraging other seemingly unlikely places to follow suit, or at least to consider doing so. Among them are Boston, Virginia, Australia, Ireland and Italy. Last week, the City Council in Philadelphia began reviewing a newly proposed bill to make bars and restaurants smoke-free.

The councilman who introduced the bill in Philadelphia, Michael A. Nutter, cited New York as an inspiration. "This is kind of the epitome of the song: 'If you can make it there,' " he said in an interview. "What people are saying is, 'If New York can deal with clean-air legislation, why can't we?' "

Mr. Nutter said he was not worried about the political ramifications.

Mr. Bloomberg's Republican critics have indicated they will raise the smoking rules during the Republican primary campaign as an example of what they call his Democratic tendency toward regulation. But many of the mayor's staunchest opponents said they thought the ban would have no effect on his re-election bid. One of his Democratic challengers, Gifford Miller, the City Council speaker, helped secure the ban's passage. And a leading contender for the Democratic mayoral nomination, Fernando Ferrer, has said he would not seek to overturn it.

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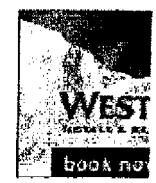

EXHIBIT 26
DATE 2-16-05
HB 643

COUNT II
(Clean Air Act - Knowing Endangerment)

185. Paragraphs 1 through 69 and 84 through 184 are incorporated by reference as if realleged in full.

186. That beginning on or about November 15, 1990, and continuing until the present, at Libby, within the State and District of Montana, defendant W.R. GRACE did knowingly release and caused to be released into the ambient air a hazardous air pollutant, namely, asbestos, and at the time, knowingly placed another person, namely the residents of the town of Libby and Lincoln County in imminent danger of death or serious bodily injury by providing and distributing asbestos contaminated vermiculite material to the community; and by causing defendant W.R. GRACE employees and their personal effects to be contaminated with asbestos, in violation of 42 U.S.C. § 7413(c)(5)(A), 18 U.S.C. § 2.

COUNT III
(Clean Air Act - Knowing Endangerment)

187. Paragraphs 1 through 69 and 84 through 184 are incorporated by reference as if realleged in full.

188. That beginning on or about December, 1993, and continuing until on or about June 15, 2000, at Libby within the State and District of Montana, the defendants, W.R. GRACE, ALAN R. STRINGER, JACK W. WOLTER, and ROBERT J. BETTACCHI did knowingly release and caused to be released into the ambient air a hazardous air pollutant, namely, asbestos, and at the time knowingly placed another person in imminent danger of death or serious bodily injury by selling real

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on March 16, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: Rep. Art Noonan (D)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	SB 21, 3/10/2005
	SB 322, 3/10/2005
	SB 433, 3/10/2005
	SB 479, 3/10/2005
Executive Action:	HB 643 DPAA

on right now. One pilot has 160 individuals and will run for six months. If this bill is enacted, there will be another 50 individuals starting in the program with slight changes.

CHAIRMAN BECKER wondered if there was a concern for those who live outside of the seven big metropolitan areas. **Mr. Sturm** said there were concerns and rural areas are always a concern. He spoke about some of those concerns and how the Department was looking at them.

Closing by Sponsor:

The Sponsor closed.

REP. MCALPIN will carry the bill.
{Tape: 2; Side: B; Approx. Time Counter: 9.9 - 15.1}

EXECUTIVE ACTION ON HB 643

Motion: **REP. ROBERTS moved that HB 643 DO PASS.**

Motion: **REP. ROBERTS moved that HB 643 BE AMENDED.**
EXHIBIT(huh58a07)

Discussion:

REP. ROBERTS explained that on the amendments there were two modifications he would like to make. On Page 3, on the first line, strike "an all beverages" and insert "a." On Page 3, under Number 11 (4), strike "and gambling devices are present."

Ms. Fox went through the gray bill for the Committee (Exhibit 8). She explained the bill with the caveat that the actual amendments are what will rule. They have been edited and include the two changes that REP. ROBERTS just gave to the Committee. The "Whereas" clauses have been taken out of Section 2, made into a preamble and will not be codified as law. She explained that Section 2 would remain but with only the following:
Section 2. Section 50-40-102, MCA, is amended to read: "50-40-102. Intent -- purpose. The legislature finds... (a) to protect the public health...(b) to guarantee the right...(c) to recognize that the...over the desire to smoke." This was found on Page 5 of the gray bill.

On Page 5 in the definition section, there is a new definition of bar. (1) Bar means an establishment with a (take out 'all beverages') license..." She continued her explanations.
EXHIBIT(huh58a08)
{Tape: 2; Side: B; Approx. Time Counter: 15.1 - 27}

REP. WINDY BOY asked how this bill would be enacted if the other non-smoking bill is passed. **Ms. Fox** replied that if both bills are passed and approved, the preemption in this bill would make a difference.

REP. HENDRICK asked about definitions under Section 3. In his area, most bars and restaurants are in the same area. The restrooms serve both facilities and are usually in the bar area which is the smoking area. He wondered how this would be handled under this bill. **Ms. Fox** was not sure.
{Tape: 2; Side: B; Approx. Time Counter: 27 - 32}

REP. MCALPIN felt there would be no regulation of the bathrooms.
{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.3}

Mark Staples responded that if the bill has to be tied down to every possible complication that could arise by unreasonable application, the bill won't be able to do it. He felt that the scenario presented by REP. HENDRICK would be an unreasonable application. It could present a problem, but he would like to think that is not what is being addressed in the bill.

REP. WARDEN inquired about "guaranteeing the right of nonsmokers to breathe smoke-free air" on Page 5 of the gray bill. He did not think that was possible to do. **Mr. Staples** responded that some of the language was difficult to deal with. He hoped that language would not set taverns and casinos up for a lawsuit. He stated that the awareness, the culture and the society has changed, but it can't turn on a dime. It is going to take time.
{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 6}

REP. MILBURN questioned the resurrection of the bill since it was not an appropriation bill. **Ms. Fox** responded that it was reclassified as a revenue bill. Both in the repealer and in the new section concerning penalties, it addresses revenue which would come from the penalties.

REP. MILBURN asked about Page 7, where it states the proprietor may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted and gambling devices are present. He reiterated the sentiments of REP. HENDRICK. He also spoke about the places where American Indians can practice their religion

when it includes smoking. He was not sure how all this fit together.
{Tape: 3; Side: A; Approx. Time Counter: 6 - 9.4}

REP. WINDY BOY said that he had an issue with the word "religion." He felt that "cultural activities" would fit better because they don't have a religion but have a way of life. He was going to make a conceptual amendment.

REP. MILBURN asked that if Indians have an event, can they smoke anywhere at any time.

REP. WINDY BOY gave a history lesson of why Indians use pipes and smoking in their cultural activities. Elements like sweetgrass and sage are used in their ceremonies. It is not the same as smoking a cigarette.
{Tape: 3; Side: A; Approx. Time Counter: 9.4 - 16}

CHAIRMAN BECKER instructed the Committee that there are the "big amendments" (Exhibit 7). REP. ROBERTS had proposed two slight modifications to the "big amendment." She asked the Committee to vote on those slight modifications first.

Ms. Fox reminded the Committee of the two amendments.

REP. WINDY BOY thought they could put his conceptual amendment with the other slight amendments.

REP. ROBERTS then explained his slight previous amendments: On Page 5 of the gray bill, under Section 3. (1) strike "an all-beverages" and add "a." On Page 7 of the gray bill, under Section 4 (4) strike "and gambling devices are present." He added another amendment on Page 5 of the gray bill, under Section 2 (2) (b) strike "guarantee" and add "recognize."

REP. HENDRICK was very concerned about the restrooms in a bar having to be used by everyone who were in the restaurant portion of the building.

Motion: REP. WAGMAN moved to SEGREGATE THE "WHEREAS" CLAUSES AND SECTION 2, PAGE 5, (2) (a), (b), AND (c).

REP. WAGMAN explained that his motion would have three sections of amendments to be voted on: the "Whereas" clauses, Section 2 (a), (b), and (c) on the Gray Bill, and the rest of the amendments.

CHAIRMAN BECKER reviewed the previous motion. At this point, the "Whereas" clauses and Section 2 are segregated from the original

amendment. The "Whereas" clauses and Section 2 included the third amendment which replaced "guarantee" with "recognize."

Ms. Fox gave language that would address all issues of REP. WINDY BOY's amendment. She said, "(f)...a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religion Freedom Act, 42 U.S.C. 1996 and 1996a." **REP. WINDY BOY** agreed with this new language and without objection, the Committee accepted this as a friendly amendment.

CHAIRMAN BECKER reiterated what the Committee would be voting on: 1) the amendments with the original two amendments by REP. ROBERTS and 2) REP. WINDY BOY's one friendly amendment.

REP. ROBERTS read a list of groups that endorsed the bill.
{Tape: 3; Side: A; Approx. Time Counter: 16 - 25}

Vote: Motion on main group of amendments with the two original modifications and REP. WINDY BOY'S amendment carried 13-3 by roll call vote with REP. CAFERRO, REP. MILBURN, and REP. STOKER voting no. REP. NOONAN and REP. WARDEN voted by proxy.

Motion: REP. ROBERTS moved that HB 643 BE AMENDED TO INCLUDE THE "WHEREAS" CLAUSES AT THE INTRODUCTION OF THE BILL AND WILL NOT BE CODIFIED.

Discussion:

REP. WAGMAN said that if any of the issues addressed in the Whereas clauses were taken to court, it could be argued that the validity of the clauses are endorsed by the Legislature. It shows legislative intent. He could not support these clauses.

REP. MCALPIN looked at the clauses differently and was in support of the amendment.

REP. WINDY BOY supported the amendment also.

REP. ROBERT did not think there was much disputation with the "Whereas" clauses. They stand as they are and should be able to sustain themselves under scrutiny.
{Tape: 3; Side: A; Approx. Time Counter: 25 - 32}

Vote: Motion carried 9-7 by roll call vote with REP. BECKER, REP. HENDRICK, REP. MCGILLVRAY, REP. MILBURN, REP. STOKER, REP. WAGMAN, and REP. WARDEN voting no. REP. NOONAN and REP. WARDEN voted by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 1}

Motion/Vote: REP. ROBERTS moved that HB 643 BE AMENDED TO INCLUDE SECTION 2 AS PREVIOUSLY AMENDED WITH THE WORD "GUARANTEE" REMOVED AND "RECOGNIZE" ADDED. Motion carried 14-2 by voice vote with REP. CAFERRO and REP. STOKER voting no. REP. NOONAN and REP. WARDEN voted by proxy.

REP. STOKER questioned the ability to bring HB 643 forward after Day 45. **Ms. Fox** said that in the original bill on Page 7, Line 15 there was the Repealer, 50-40-109, which was a penalty section. By repealing that penalty, revenue could potentially be reduced which would make it a revenue bill.

{REP. NOONAN returned to the hearing.}

Motion: REP. ROBERTS moved that HB 643 DO PASS AS AMENDED.

REP. MILBURN expressed that many words had been added to the bill and he did not feel that the bill was the right way to go. He could not support the bill.
{Tape: 3; Side: B; Approx. Time Counter: 1 - 9.6}

REP. MCALPIN did not think the Committee should get too wrapped up in the details of "what if's." The gray bill had been looked at by the best experts on how to do this in a reasonable manner.

REP. MILBURN agreed with some of REP. MCALPIN's statements, but he did not think it wise to make a law in order to have someone break it to make the law reasonable. A law should be made so that all would abide by it.
{Tape: 3; Side: B; Approx. Time Counter: 9.6 - 11.2}

REP. CAFERRO said that she was voting against the bill. She is a Helena Legislator and Helena passed a clean indoor air ordinance by 68%. This bill, as amended, preempts the clean indoor air ordinance. She could not vote for a bill that goes against something her constituents so strongly supported. She did not agree with the premise that people could find another job if they did not want to be around people who were smoking.
{Tape: 3; Side: B; Approx. Time Counter: 11.2 - 12.5}

REP. MCGILLVRAY asked REP. MCALPIN to respond to REP. CAFERRO's statements. **REP. MCALPIN** responded that in his personal and political judgment, REP. BERGREN's bill was going to be signed into law within the month if this bill is not passed and that would immediately preempt Helena's ordinance. This bill is a compromise and an alternative to that scenario.

Vote: **Motion carried 13-3 by roll call vote with REP. CAFERRO, REP. MILBURN, and REP. STOKER voting no. REP. WARDEN voted by proxy.**
{Tape: 3; Side: B; Approx. Time Counter: 12.5 - 13.4}

HOUSE OF REPRESENTATIVES
Roll Call
HUMAN SERVICES COMMITTEE

DATE 3-16-05

NAME	PRESENT	ABSENT	EXCUSED
REP. ARLENE BECKER, CHAIR	X		
REP. TOM FACEY, VICE CHAIR	X		
REP. DON ROBERTS, VICE CHAIR	X		
REP. MARY CAFERRO	X		
REP. EMELIE EATON	X		
REP. GORDON HENDRICK	X		
REP. TERESA HENRY	X		
REP. WILLIAM JONES	X		
REP. DAVE McALPIN	X		
REP. TOM McGILLVRAY	X		
REP. MIKE MILBURN	X		
REP. ART NOONAN			X
REP. RON STOKER	X		
REP. PAT WAGMAN	X		
REP. BILL WARDEN	X		
REP. JONATHAN WINDY BOY	X		

EXHIBIT 7
DATE 3-16-05
HB 643

Amendments to House Bill No. 643
1st Reading Copy

Requested by Representative Don Roberts

For the House Human Services Committee

Prepared by Susan Byorth Fox
March 11, 2005 (2:22pm)

1. Title, line 10.
Following: "SUBDIVISION"
Insert: "AFTER SEPTEMBER 30, 2009"
Following: "SUBDIVISION;"
Insert: "ESTABLISHING PENALTIES;"

2. Title, line 11.
Following: "MCA;"
Strike: "AND"

3. Title, line 12.
Following: "MCA"
Insert: "; AND PROVIDING A TERMINATION DATE"

4. Page 1, line 13.
Insert: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of

nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

5. Page 2.
Following: line 2.
Insert: "(4) A violation of this section is subject to the penalties provided in [section 8]."
Renumber: subsequent subsection

6. Page 2, line 18 through page 4, line 1.
Strike: "(1)" on page 2, line 18 through "Accordingly, the" on page 4, line 1
Insert: "The"

7. Page 4, line 2.
Strike: "(a)"
Insert: "(1)"
Renumber: subsequent subsections

8. Page 4.
Following: line 8

Insert: "(1) "Bar" means an establishment with ~~an all beverages~~ a license license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos."
Renumber: subsequent subsections

9. Page 4, line 21.
Strike: "and taverns"

10. Page 4.
Following: line 26
Insert: "(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both."
Renumber: subsequent subsections

11. Page 5.
Following: line 24
Insert: "(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted ~~and gambling devices are present~~."
Renumber: subsequent subsections

12. Page 5.
Following: line 26
Insert: "(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;"
Renumber: subsequent subsections

13. Page 6, line 6.
Strike: "20%"
Insert: "35%"
Following: ";"
Insert: "and"

14. Page 6, line 7 through line 12.

Strike: subsections (e) and (f) in their entirety
Insert: "(f) any place in which American Indians practice their religion in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

15. Page 7, line 7.
Strike: "not"

16. Page 7, line 8.
Strike: "do not"

17. Page 7, line 11.
Insert: "NEW SECTION. **Section 8. Penalties.** (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than $25 or more than $100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor and shall be punished as follows:

(a) a warning for the first violation;

(b) a written reprimand for a second violation; and

(c) within any 3-year period, a fine of:

(i) $100 for a third violation;

(ii) $200 for a fourth violation; and

(iii) $500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401."
Renumber: subsequent sections

18. Page 7, line 22.
Strike: "[Sections 7 and 8]"
Insert: "[Sections 7 through 9]"

19. Page 7, line 24.
Strike: "[sections 7 and 8]"
Insert: "[sections 7 through 9]"

20. Page 7, line 26 through line 28.
Strike: section 12 in its entirety
Insert: "NEW SECTION. **Section 13. Nonseverability.** It is the intent of the legislature that each part of [this act] is

essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid."
Insert: "NEW SECTION. **Section 14. {standard} Termination.** [Section 7] terminates September 30, 2009."

- END -

EXHIBIT 8
DATE 3-16-05
HB 643

HOUSE BILL NO. 643

INTRODUCED BY T. DOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; AND REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA AND PROVIDING A TERMINATION DATE."

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, the U.S. Department of Health and Human Services National Toxicology Program has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that a law that effectively makes workplaces and public places smoke-free may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. surgeon general has concluded that the technology of smoke separation, which physically separates smokers and nonsmokers within the same air space, may reduce but does not eliminate the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by ventilation and that air cleaners, which are not adequately capable

of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke;

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires and cigarette and cigar butts and ash stains on merchandise and fixtures, all of which damage property for businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety;

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-1-220, MCA, is amended to read:

"20-1-220. Use of tobacco product in public school building or on public school property prohibited. (1) An individual may not use a tobacco product in a public school building or on public school property ~~during school hours~~.

(2) Subsection (1) does not apply to the use of a tobacco product:

~~(a)~~ in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

~~(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or~~

~~(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or~~

~~(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district~~.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or pubic school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

Section 2. Section 50-40-102, MCA, is amended to read:

"50-40-102. Intent -- purpose. ~~The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke. The legislature finds and declares that:~~

~~(a) numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer. The national cancer institute has determined that secondhand smoke is responsible for the early deaths of~~

~~(b) the U.S. department of health and human services, centers for disease control and prevention, has listed secondhand smoke as a known carcinogen;~~

~~(c) a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect has determined that law to enforce smoke-free workplaces and public places may be associated with a substantial~~

from heart disease;

(d) secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer;

(e) the Americans with Disabilities Act of 1990, which requires that disabled persons have access to workplaces and public places, considers impaired respiratory function to be a disability;

(f) the U.S. surgeon general has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. The environmental protection agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known dangers of secondhand smoke;

(g) it has been determined by the centers for disease control and prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is now lower than previously reported, with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and the centers for disease control and prevention warns that patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking;

(h) a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled business settings have a 25% to 50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function;

(i) smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke;

(j) numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is a sound economic policy and provides the maximum level of protection to all workers;

(k) smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses;

~~(2) Accordingly, the~~ The legislature finds and declares that the purposes of this part are as follows:

(a) to protect the public health and welfare by prohibiting smoking in public places and places of employment;

(b) to ~~guarantee~~ recognize the right of nonsmokers to breathe smoke-free air; and

(c) to recognize that the need to breathe smoke-free air has priority over the desire to smoke."

Section 3. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

~~(1) Bar means an establishment with a retail beverage license pursuant to title 16, chapter 4, devoted to serving alcoholic beverages for consumption by guests or patrons on premises and in which the serving of food is only incidental to consumption of alcoholic beverages or gambling operations, including but not limited to taverns, nightclubs, cocktail lounges, and casinos.~~

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enclosed public place" means an indoor area, room, or vehicle ~~used by~~ that the general public is allowed to enter or ~~serving~~ that serves as a place of work, including but not limited to the following:

(a) restaurants;

(b) stores;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

~~educational or~~

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities; ~~and~~

(g) meeting rooms open to the public;

(h) bars ~~and taverns~~;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(4) "Establishment" means an enterprise under one roof that serves the public and for which a single

person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

~~(5) Incidental to the service of alcoholic beverages to gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.~~

(~~6~~5) "Place of work" means an enclosed room where ~~more than~~ one ~~employee~~ or more individuals ~~works~~ work.

(~~7~~6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

~~(7) "Smoking area" means a designated area in which smoking is permitted."~~

Section 4. Section 50-40-104, MCA, is amended to read:

"50-40-104. ~~Designation or reservation of smoking or nonsmoking areas -- notice~~ Smoking in enclosed public places prohibited -- notice to public -- places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

~~(1) The proprietor or manager of an enclosed public place shall:~~

~~(a) designate nonsmoking areas with easily readable signs;~~

~~(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;~~

~~(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or~~

~~(d) designate and reserve the entire area as a nonsmoking area.~~

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, ~~whether or not areas within the establishment have been reserved for nonsmokers~~ that smoking in the enclosed public place is prohibited.

~~(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.~~

(~~4~~3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all

parts of the bus.

~~(4) The proprietor or manager of a business licensed under 23-5-61 or 23-5-62 may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted and gambling devices are present.~~

(5) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

~~(a) until September 30, 2009, a bar, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section.~~

(6) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

(c) a private motor vehicle;

(d) school property in which smoking is allowed pursuant to the exception in 20-1-220;

(e) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than ~~20%~~ 65% of the rooms available to rent to guests may be designated as smoking rooms;

~~(f) a private or semiprivate room in a long-term care facility, as defined in 50-5-101, and licensed pursuant to Title 50, chapter 5 that is occupied by one or more individuals, all of whom are smokers and have indicated a desire to be placed in a room where smoking is permitted and from where smoke does not infiltrate to other areas of the facility where smoking is prohibited pursuant to this part; and~~

~~(g) a room or other space used for bona fide traditional American Indian ceremonial purposes in connection with the practice of a traditional Indian religion.~~ cultural activities

~~(h) any place in which American Indians practice their religion in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.~~

Section 5. Section 50-40-108, MCA, is amended to read:

"50-40-108. Enforcement. The provisions of this part shall must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department."

Section 6. Section 50-40-201, MCA, is amended to read:

"50-40-201. ~~Reservation of smoking and nonsmoking areas in work areas in local~~ Local government buildings ~~--~~ smoking prohibited. (1) In ~~offices and work areas in~~ all parts of buildings maintained by a political subdivision, ~~except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.~~

~~(2) The governing body of a political subdivision may designate any building maintained by it as smoke-free~~ smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions ~~authorized by~~ contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

NEW SECTION. **Section 7. Part ~~not~~ preemptive of stricter ordinance.** The provisions of this part ~~do not~~ preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation.

~~NEW SECTION. Section 8. Penalties. (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than $25 or more than $100.~~

~~(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor and shall be punished as follows:~~

~~(a) a warning for the first offense;~~

~~(b) a written reprimand for a second offense; and~~

~~(c) within any 1-year period, a fine of~~

~~(i) $100 for a third violation;~~

~~(ii) $200 for a fourth violation; and~~

~~(iii) $500 for a fifth or subsequent violation.~~

~~(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401.~~

NEW SECTION. **Section 9. Rulemaking required.** The department shall adopt rules to implement this part.

NEW SECTION. **Section 10. Repealer.** Sections 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, and 50-40-207, MCA, are repealed.

NEW SECTION. **Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 12. Codification instruction.** [Sections 7 and 8] are intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to [sections 7 and 8].

~~NEW SECTION. **Section 13. Non-Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. the entire provision of (this Act) are invalid.~~

~~NEW SECTION. Section 13. Nonseverability. It is the intent of the legislature that each part of this act is severally dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are void.~~

~~NEW SECTION. Section 14. Termination of Certain Provisions. Sections 4, 5(3), Section 7, and Section 10 shall terminate on September 30, 2009.~~

- END -

HOUSE OF REPRESENTATIVES
Roll Call Vote
HUMAN SERVICES COMMITTEE

DATE 3-16-05 BILL NO HB643 MOTION NO. 1
MOTION: main group of amendments with 2 modifications + Windy-Boy's amendment

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. TOM FACEY, VICE CHAIR	X		
REP. DON ROBERTS, VICE CHAIR	X		
REP. MARY CAFERRO		X	
REP. EMELIE EATON	X		
REP. GORDON HENDRICK	X		
REP. TERESA HENRY	X		
REP. WILLIAM JONES	X		
REP. DAVE McALPIN	X		
REP. TOM McGILLVRAY	X		
REP. MIKE MILBURN		X	
REP. ART NOONAN	X		X
REP. RON STOKER		X	
REP. PAT WAGMAN	X		
REP. BILL WARDEN	X		X
REP. JONATHAN WINDY BOY	X		
REP. ARLENE BECKER, CHAIR	X		
	13	3	

HOUSE OF REPRESENTATIVES
Roll Call Vote
HUMAN SERVICES COMMITTEE

DATE 3-16-05 BILL NO HB 643 MOTION NO. 2
MOTION: Whereas to be ~~removed~~ included

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. TOM FACEY, VICE CHAIR	X		
REP. DON ROBERTS, VICE CHAIR	X		
REP. MARY CAFERRO	X		
REP. EMELIE EATON	X		
REP. GORDON HENDRICK		X	
REP. TERESA HENRY	X		
REP. WILLIAM JONES	X		
REP. DAVE McALPIN	X		
REP. TOM McGILLVRAY		X	
REP. MIKE MILBURN		X	
REP. ART NOONAN	X		X
REP. RON STOKER		X	
REP. PAT WAGMAN		X	
REP. BILL WARDEN		X	X
REP. JONATHAN WINDY BOY	X		
REP. ARLENE BECKER, CHAIR		X	
	9	7	

s:/HumServRollCallVote2005

HOUSE OF REPRESENTATIVES
Roll Call Vote
HUMAN SERVICES COMMITTEE

DATE 3-16-05 BILL NO HB643 MOTION NO. #3
MOTION: DPAA

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. TOM FACEY, VICE CHAIR	X		
REP. DON ROBERTS, VICE CHAIR	X		
REP. MARY CAFERRO		X	
REP. EMELIE EATON	X		
REP. GORDON HENDRICK	X		
REP. TERESA HENRY	X		
REP. WILLIAM JONES	X		
REP. DAVE McALPIN	X		
REP. TOM McGILLVRAY	X		
REP. MIKE MILBURN		X	
REP. ART NOONAN	X		
REP. RON STOKER		X	
REP. PAT WAGMAN	X		
REP. BILL WARDEN	X		X
REP. JONATHAN WINDY BOY	X		
REP. ARLENE BECKER, CHAIR	X		
	13	3	

COMMITTEE PROXY

DATE: 3/2/05

I request to be excused from the H. Human Services

Committee because of other commitments. I desire to leave my proxy vote with:

Don Nelson

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
3-3-05 HB 1440	Y	
Amd - 643 body	Y	
HB 643 Amd - Whereas		N
3-16-05 Amd - Section 2	Y	
643 Bill as Amed	Y	

SENATE BILL/AMENDMENT	AYE	NO

Rep./Sen. Bill Amerland
(Signature)

COMMITTEE PROXY

DATE 3-16-05

I request to be excused from the Human Services Committee meeting this date because of other commitments. I desire to leave my proxy vote with Rep. Lamey

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO
HB 643 #1	X	
HB 643 #2	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep. [signature]

(Signature)

Hoeven

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Human Services** recommend that **House Bill 643** (first reading copy -- white) **do pass as amended**.

Signed: Arlene Becker
Representative Arlene Becker, Chair

And, that such amendments read:

1. Title, line 10.
Following: "SUBDIVISION"
Insert: "AFTER SEPTEMBER 30, 2009"
Following: "SUBDIVISION;"
Insert: "ESTABLISHING PENALTIES;"

2. Title, line 11.
Following: "MCA;"
Strike: "AND"

3. Title, line 12.
Following: "MCA"
Insert: "; AND PROVIDING A TERMINATION DATE"

4. Page 1, line 13.
Insert: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

Committee Vote:
Yes 13, No 3.

591239SC.hkh
3/17/05

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

5. Page 2.
Following: line 2.
Insert: "(4) A violation of this section is subject to the penalties provided in [section 8]."
Renumber: subsequent subsection

6. Page 2, line 18 through page 4, line 1.
Strike: "(1)" on page 2, line 18 through "Accordingly, the" on page 4, line 1

Insert: "The"

7. Page 4, line 2.
Strike: "(a)"
Insert: "(1)"
Renumber: subsequent subsections

8. Page 4, line 4.
Strike: "guarantee"
Insert: "recognize"

9. Page 4.
Following: line 8
Insert: "(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos."
Renumber: subsequent subsections

10. Page 4, line 21.
Strike: "and taverns"

11. Page 4.
Following: line 26
Insert: "(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both."
Renumber: subsequent subsections

12. Page 5.
Following: line 24
Insert: "(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted."
Renumber: subsequent subsections

13. Page 5.
Following: line 26

Insert: "(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;"
Renumber: subsequent subsections

14. Page 6, line 6.
Strike: "20%"
Insert: "35%"
Following: ";"
Insert: "and"

15. Page 6, line 7 through line 12.
Strike: subsections (e) and (f) in their entirety
Insert: "(f) a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

16. Page 7, line 7.
Strike: "not"

17. Page 7, line 8.
Strike: "do not"

18. Page 7, line 11.
Insert: "NEW SECTION. **Section 8. Penalties.** (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than $25 or more than $100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor and shall be punished as follows:

(a) a warning for the first violation;

(b) a written reprimand for a second violation; and

(c) within any 3-year period, a fine of:

(i) $100 for a third violation;

(ii) $200 for a fourth violation; and

(iii) $500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401."
Renumber: subsequent sections

19. Page 7, line 22.
Strike: "[Sections 7 and 8]"
Insert: "[Sections 7 through 9]"

20. Page 7, line 24.
Strike: "[sections 7 and 8]"
Insert: "[sections 7 through 9]"

21. Page 7, line 26 through line 28.
Strike: section 12 in its entirety
Insert: "NEW SECTION. **Section 13. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid."
Insert: "NEW SECTION. **Section 14. Termination.** [Section 7] terminates September 30, 2009."

- END -

HOUSE BILL NO. 643

INTRODUCED BY DOWELL, ROBERTS, MCALPIN, WARD, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; ESTABLISHING PENALTIES; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; ~~AND~~ REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA; AND PROVIDING A TERMINATION DATE."

WHEREAS, NUMEROUS STUDIES HAVE FOUND THAT TOBACCO SMOKE IS A MAJOR CONTRIBUTOR TO INDOOR AIR POLLUTION AND THAT BREATHING SECONDHAND SMOKE, ALSO KNOWN AS ENVIRONMENTAL TOBACCO SMOKE, IS A CAUSE OF DISEASE IN HEALTHY NONSMOKERS, INCLUDING DISEASES SUCH AS HEART DISEASE, STROKE, RESPIRATORY DISEASE, AND LUNG CANCER; AND

WHEREAS, THE NATIONAL CANCER INSTITUTE DETERMINED IN 1999 THAT SECONDHAND SMOKE IS RESPONSIBLE FOR THE EARLY DEATHS OF UP TO 65,000 AMERICANS ANNUALLY; AND

WHEREAS, THE NATIONAL TOXICOLOGY PROGRAM OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS LISTED SECONDHAND SMOKE AS A KNOWN CARCINOGEN; AND

WHEREAS, A STUDY OF HOSPITAL ADMISSIONS FOR ACUTE MYOCARDIAL INFARCTION IN HELENA, MONTANA, BEFORE, DURING, AND AFTER A LOCAL ORDINANCE ELIMINATING SMOKING IN WORKPLACES AND PUBLIC PLACES WAS IN EFFECT, HAS DETERMINED THAT LAWS TO ENFORCE SMOKE-FREE WORKPLACES AND PUBLIC PLACES MAY BE ASSOCIATED WITH A REDUCTION IN MORBIDITY FROM HEART DISEASE; AND

WHEREAS, THE U.S. SURGEON GENERAL HAS DETERMINED THAT THE SIMPLE SEPARATION OF SMOKERS AND NONSMOKERS WITHIN THE SAME AIR SPACE MAY REDUCE, BUT DOES NOT ELIMINATE, THE EXPOSURE OF NONSMOKERS TO SECONDHAND SMOKE; AND

WHEREAS, THE ENVIRONMENTAL PROTECTION AGENCY HAS DETERMINED, AS OF THE INTRODUCTION DATE

OF THIS BILL, THAT SECONDHAND SMOKE CANNOT BE REDUCED TO SAFE LEVELS IN BUSINESSES BY HIGH RATES OF VENTILATION AND THAT AIR CLEANERS, WHICH ARE ONLY CAPABLE OF FILTERING THE PARTICULATE MATTER AND ODORS IN SMOKE, DO NOT ELIMINATE THE KNOWN TOXINS IN SECONDHAND SMOKE; AND

WHEREAS, IT HAS BEEN DETERMINED BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION THAT THE RISK OF ACUTE MYOCARDIAL INFARCTION AND CORONARY HEART DISEASE ASSOCIATED WITH EXPOSURE TO TOBACCO SMOKE IS NONLINEAR AT LOW DOSES, INCREASING RAPIDLY WITH RELATIVELY SMALL DOSES, SUCH AS THOSE RECEIVED FROM SECONDHAND SMOKE OR ACTIVELY SMOKING ONE OR TWO CIGARETTES A DAY; AND

WHEREAS, THE CENTERS FOR DISEASE CONTROL AND PREVENTION WARNS THAT ALL PATIENTS AT INCREASED RISK OF CORONARY HEART DISEASE OR WITH KNOWN CORONARY ARTERY DISEASE SHOULD AVOID ALL INDOOR ENVIRONMENTS THAT PERMIT SMOKING; AND

WHEREAS, NUMEROUS ECONOMIC ANALYSES EXAMINING RESTAURANT AND HOTEL RECEIPTS AND CONTROLLING FOR ECONOMIC VARIABLES HAVE SHOWN EITHER NO DIFFERENCE OR A POSITIVE ECONOMIC IMPACT AFTER ENACTMENT OF LAWS REQUIRING WORKPLACES TO BE SMOKE-FREE; AND

WHEREAS, SMOKING IS A POTENTIAL CAUSE OF FIRES, AND CIGARETTE AND CIGAR BURNS AND ASH STAINS ON MERCHANDISE AND FIXTURES CAUSE ECONOMIC DAMAGE TO BUSINESSES; AND

WHEREAS, CREATION OF SMOKE-FREE WORKPLACES IS SOUND ECONOMIC POLICY AND PROVIDES THE MAXIMUM LEVEL OF EMPLOYEE HEALTH AND SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-1-220, MCA, is amended to read:

"20-1-220. Use of tobacco product in public school building or on public school property prohibited. (1) An individual may not use a tobacco product in a public school building or on public school property ~~during school hours~~.

(2) Subsection (1) does not apply to the use of a tobacco product:

~~(a)~~ in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

~~(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or~~

~~(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or~~

~~(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district~~.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) A VIOLATION OF THIS SECTION IS SUBJECT TO THE PENALTIES PROVIDED IN [SECTION 8].

~~(4)~~(5) For the purposes of this section, the following definitions apply:

(a) "Public school building or public school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

Section 2. Section 50-40-102, MCA, is amended to read:

"50-40-102. Intent -- purpose. ~~The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.~~ ~~(1) The legislature finds and declares that:~~

~~(a) numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer. The national cancer institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually.~~

~~(b) the U.S. department of health and human service's national toxicology program has listed secondhand smoke as a known carcinogen;~~

~~(c) a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease;~~

~~(d) secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.~~

~~(e) The Americans With Disabilities Act of 1990, which requires that disabled persons have access to workplaces and public places, considers impaired respiratory function to be a disability;~~

~~(f) the U.S. surgeon general has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. The environmental protection agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.~~

~~(g) It has been determined by the centers for disease control and prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and the centers for disease control and prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking;~~

~~(h) a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25% to 50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.~~

~~(i) smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke;~~

~~(i) numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.~~

~~(k) smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.~~

~~(2) Accordingly, the~~ THE legislature finds and declares that the purposes of this part are as follows:

~~(a)~~(1) to protect the public health and welfare by prohibiting smoking in public places and places of employment;

~~(b)~~(2) to ~~guarantee~~ RECOGNIZE the right of nonsmokers to breathe smoke-free air; and

~~(c)~~(3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke."

Section 3. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "BAR" MEANS AN ESTABLISHMENT WITH A LICENSE ISSUED PURSUANT TO TITLE 16, CHAPTER 4, THAT IS DEVOTED TO SERVING ALCOHOLIC BEVERAGES FOR CONSUMPTION BY GUESTS OR PATRONS ON THE PREMISES AND IN WHICH THE SERVING OF FOOD IS ONLY INCIDENTAL TO THE SERVICE OF ALCOHOLIC BEVERAGES OR GAMBLING OPERATIONS, INCLUDING BUT NOT LIMITED TO TAVERNS, NIGHT CLUBS, COCKTAIL LOUNGES, AND CASINOS.

~~(1)~~(2) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)~~(3) "Enclosed public place" means an indoor area, room, or vehicle ~~used by~~ that the general public is allowed to enter or ~~serving~~ that serves as a place of work, including but not limited to the following:

(a) restaurants~~;~~;

(b) stores~~;~~;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

~~educational or~~

(e) health care facilities~~;~~;

(f) auditoriums, arenas, and assembly facilities; ~~and~~

(g) meeting rooms open to the public;

(h) bars ~~and taverns~~;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

~~(3)~~(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "INCIDENTAL TO THE SERVICE OF ALCOHOLIC BEVERAGES OR GAMBLING OPERATIONS" MEANS THAT AT LEAST 60% OF THE BUSINESS'S ANNUAL GROSS INCOME COMES FROM THE SALE OF ALCOHOLIC BEVERAGES OR GAMBLING RECEIPTS, OR BOTH.

~~(4)~~(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

~~(5)~~(7) "Place of work" means an enclosed room where ~~more than~~ one ~~employee~~ or more individuals ~~works~~ work.

~~(6)~~(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

~~(7) "Smoking area" means a designated area in which smoking is permitted.~~"

Section 4. Section 50-40-104, MCA, is amended to read:

"50-40-104. ~~Designation or reservation of smoking or nonsmoking areas -- notice~~ Smoking in enclosed public places prohibited -- notice to public -- places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

~~(1) The proprietor or manager of an enclosed public place shall:~~

~~(a) designate nonsmoking areas with easily readable signs;~~

~~(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;~~

~~(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or~~

~~(d) designate and reserve the entire area as a nonsmoking area.~~

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign

in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, ~~whether or not areas within the establishment have been reserved for nonsmokers~~ that smoking in the enclosed public place is prohibited.

~~(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.~~

~~(4)~~(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) THE PROPRIETOR OR MANAGER OF A BUSINESS LICENSED UNDER 23-5-611(1)(A) OR (1)(C) MAY NOT ALLOW ANY MEMBER OF THE PUBLIC WHO IS UNDER 18 YEARS OF AGE TO BE PRESENT IN ANY AREA OF THE ESTABLISHMENT IN WHICH SMOKING IS PERMITTED.

~~(4)~~(5) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

(A) UNTIL SEPTEMBER 30, 2009, BARS, PROVIDED THAT SMOKE FROM THE BAR DOES NOT INFILTRATE INTO AREAS WHERE SMOKING IS PROHIBITED UNDER THIS SECTION;

~~(a)~~(B) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

~~(b)~~(C) a private motor vehicle;

~~(c)~~(D) school property in which smoking is allowed pursuant to the exception in 20-1-220;

~~(d)~~(E) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than ~~20%~~ 35% of the rooms available to rent to guests may be designated as smoking rooms; AND

~~(e) a private or semiprivate room in a long-term care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5, that is occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted and from which smoke does not infiltrate to other parts of the facility where smoking is prohibited pursuant to this part; and~~

~~(f) a room or other space used for bona fide, traditional, American Indian ceremonial purposes in~~

~~connection with the practice of a traditional Indian religion.~~

(F) A SITE THAT IS BEING USED IN CONNECTION WITH THE PRACTICE OF CULTURAL ACTIVITIES BY AMERICAN INDIANS THAT IS IN ACCORDANCE WITH THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT, 42 U.S.C. 1996 AND 1996A."

Section 5. Section 50-40-108, MCA, is amended to read:

"50-40-108. Enforcement. The provisions of this part ~~shall~~ must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department."

Section 6. Section 50-40-201, MCA, is amended to read:

"50-40-201. ~~Reservation of smoking and nonsmoking areas in work areas in local~~ Local government buildings -- smoking prohibited. (1) In ~~offices and work areas in~~ all parts of buildings maintained by a political subdivision, ~~except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.~~

~~(2) The governing body of a political subdivision may designate any building maintained by it as~~ ~~smoke-free~~ smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions ~~authorized by~~ contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

NEW SECTION. **Section 7. Part ~~not~~ preemptive of stricter ordinance.** The provisions of this part ~~do not~~ preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for

violation of the ordinance or regulation.

NEW SECTION. **Section 8. Penalties.** (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than $25 or more than $100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

(a) a warning for the first violation;

(b) a written reprimand for a second violation; and

(c) within any 3-year period, a fine of:

(i) $100 for a third violation;

(ii) $200 for a fourth violation; and

(iii) $500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a) or (1)(c).

NEW SECTION. **Section 9. Rulemaking required.** The department shall adopt rules to implement this part.

NEW SECTION. **Section 10. Repealer.** Sections 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, and 50-40-207, MCA, are repealed.

NEW SECTION. **Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 12. Codification instruction.** ~~[Sections 7 and 8]~~ [sections 7 through 9] are intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter

40, part 1, apply to ~~[sections 7 and 8]~~ [SECTIONS 7 THROUGH 9].

~~NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.~~

NEW SECTION. **SECTION 13. NONSEVERABILITY.** IT IS THE INTENT OF THE LEGISLATURE THAT EACH PART OF [THIS ACT] IS ESSENTIALLY DEPENDENT UPON EVERY OTHER PART, AND IF ONE PART IS HELD UNCONSTITUTIONAL OR INVALID, ALL OTHER PARTS ARE INVALID.

NEW SECTION. **SECTION 14. TERMINATION.** [SECTION 7] TERMINATES SEPTEMBER 30, 2009.

- END -

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on April 5, 2005 at 9:03 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 374, HB 643, 4/1/2005
Executive Action: HB 374, HB 643

Mr. Muhs stated that he believed it dropped about 35 points.

{Tape: 1; Side: A; Approx. Time Counter: 10.5 - 22.5}

Closing by Sponsor:

REP. HARRIS declared that it is bad enough to be driving drunk; however, it is worse to have a child in the vehicle with you. This bill is a step to deter this activity.

HEARING ON HB 643

{Tape: 1; Side: A; Approx. Time Counter: 22.5 - 23.2}

Opening Statement by Sponsor:

REP. TIM DOWELL (D), HD 8, opened the hearing on **HB 643,** Eliminate smoking in enclosed public places.

REP. DOWELL spoke about several different organizations that have drafted a compromise to HB 643. He explained that they agree to adhere to this bill as long as it remains as is; they do not want any amendments.

Proponents' Testimony:

Cliff Christian, American Heart Association, stated that approximately 1400 individuals die each year from smoke. Approximately 200 of those individuals don't smoke; they die from second-hand smoke. He spoke about other toxins that are very dangerous as well, such as asbestos. He explained the compromise and what will happen with the passage of this bill. He also discussed the ramifications of this bill not passing. He provided a document that deals with the compromise.

EXHIBIT(jus72a02)

Mark Staples, Attorney, Montana Tavern Association, provided some background information on this issue. It is important to find some common ground. He spoke about the section regarding non-severability and the four-year gap for the exempt organizations with passage of this bill.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 15.1}

Dick Paulsen, Executive Director, American Lung Association of the Northern Rockies, provided two documents which he discussed with the Committee. He spoke about second-hand smoke and ventilation technology. He asked that there not be amendments to this bill.

EXHIBIT(jus72a03)
EXHIBIT(jus72a04)

Ralph Ferraro, President, Montana Tavern Association, stated that they have worked hard to put this bill together. He added that some of the members do not agree. However, he implores the committee to pass this important piece of legislation.

Tim Burton, City Manager, Helena, MT, stands in support of HB 643. He stated that although this doesn't go as far and fast as they would like to see it go, it is a very reasonable compromise. He urged a do pass.

Cal McOmber, Owner, Corvallis Tavern, Corvallis, Mt., urged the Committee to support HB 643.

Betty Beverly, Executive Director, Montana Senior Citizens Association, asserted that they have been working on the smoking ban for four years. There are many seniors concerned with this issue. She provided personal experiences in regard to this bill.

Rich Miller, Executive Director, Montana Gaming Industry Association, attested that Mr. Staples provided a very good description of the process they have gone through to keep this moving. They support this bill as it stands.

Joan Miles, Lewis & Clark County Health Department, spoke about the enforcement section. She stated that four years is a long period of time. Also, there is no real penalty for offenders of this law. She commented that in time, this bill will be self-enforced.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2}

Mike Ferradis, President, Cascade County Tavern Association, stood in support of the compromise and the bill as is.

Pat Melby, Montana Medical Association, stated that this is a major public health issue. This is a good compromise measure. They strongly support the bill as is.

John Hayes, Secretary, Cascade County Tavern Association, Insurance Agent, Great Falls, MT, stands in support of HB 643.

Janie McCall, Deaconness Billings Clinic, appreciates all the hard work that has gone into this bill. They strongly support HB 643.

Tom Isler, Past President, Montana Tavern Association, stated that this is a good bill and they support it.

Mary McCue, Executive Director, Montana Dental Association, described the organization and stated that dentists are generally the first to diagnose problems associated with smoking. They strongly support this bill.

Jim Ahrens, President, Montana Hospital Association, asserted that they strongly support this bill. He stated that it would be truly valuable to everybody if they could reach a compromise.

{Tape: 2; Side: A; Approx. Time Counter: 2 - 9.4}

Opponents' Testimony:

REP. JOE MCKENNEY, HD 18, GREAT FALLS, opposes the bill as it is currently written. He stated that this bill would put his company in bankruptcy. He provided a proposed amendment to the Committee and explained it.

EXHIBIT(jus72a05)

SEN. DAVE LEWIS, SD 42, HELENA, attested that this is not good for rural bar owners. He directed the members to Page 7, Line 9, and reiterated that it is not a level playing field for small towns and rural areas.

{Tape: 2; Side: A; Approx. Time Counter: 9.4 - 19.5}

Kristin Page Nei, American Cancer Society, remarked that they cannot support HB 643 as amended. They oppose the preemption for local opportunities. They also oppose the non-severability clause. She provided her testimony to the Committee. She also provided some information on second-hand smoke and non-smokers' rights.

EXHIBIT(jus72a06)
EXHIBIT(jus72a07)
EXHIBIT(jus72a08)

Rhonda Carpenter-Wiggers, Montana Coin Machine Operators Association, stated that they reluctantly stand in opposition of this bill as it is written. They do not want to kill the bill. They support **REP. McKENNEY's** amendments. She directed them to Page 5, Lines 7-11. She provided scenarios in which gambling and smoking are only available in limited areas.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 3}

Rick DeMarinis, Mechanical Engineer, explained the air exchange option that could allow some institutions to remain smoking, but allow for clean air as well. He provided a document to the Committee that illustrates this system.

EXHIBIT(jus72a09)

Michael E. Hanson, Co-Owner, Restaurant, Bar & Casino, Fort Benton, MT, stated that they have placed a ventilation system in their establishment for better comfort for customers and staff. Their business has increased as a result of this.

Mike Lamphier, Bar-Owner, Lewistown, MT, repeated some of the comments in regard to rural communities. He stated that they appreciate the work that both sides have done; he hopes they can reach further compromises without putting people out of business.

Mark Langehough, Co-Owner of a Bar in Kalispell, stated that he has a problem trying to outlaw something that is legal. He claimed that they need to provide a place for people to go and smoke.

{Tape: 2; Side: B; Approx. Time Counter: 3 - 13.6}

Informational Testimony:

Dr. Richard Sargent, Physician, Helena, MT, provided a disc to the Committee which outlines health and economic issues associated with smoking.

EXHIBIT(jus72a10)

{Tape: 2; Side: B; Approx. Time Counter: 13.6 - 24.9}

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked Dr. Sargent about the increase in heart disease if people are exposed to second-hand smoke.

Dr. Sargent stated that in the Boston Study, for every 10 micrograms per cubic meter in 2.5, there was a 1% increase in heart disease. He stated that going to a 400 level, there would be approximately a 40% increase in heart disease.

SEN. SHOCKLEY inquired, "A 40% increase from what?"

Dr. Sargent attested that in Helena, they had a baseline figure of heart disease. They based their findings from that figure regarding the city-wide no smoking ordinance.

SEN. SHOCKLEY wondered if the charts he presented earlier were studies done over long periods of time.

Dr. Sargent described that the Boston Study was performed over 7 months.

SEN. SHOCKLEY reiterated that if he doesn't know what that base rate is, the statistics are not all that informative.

Dr. Sargent claimed that one of the studies he is referring to was supported by the Philip Morris Company. He declared that they were more interested in deaths, rather than instances of occurrence. He commented that most people survive heart attacks; there is a difference between deaths and occurrences.

SEN. SHOCKLEY hoped that Dr. Sargent could express these figures in cost per hundred thousand.

Dr. Sargent stated that he would not be able to provide that information at this time.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 6.5}

SEN. MOSS wished to clarify that Mr. Staples works for Montana Tavern Association. **Mr. Staples** attested that is correct.

SEN. MOSS asked him to explain the number of members in the Association as well as their roles.

Mr. Staples explained all the organizations and establishments that they represent. He stated that they represent any establishment that wishes to serve alcohol on the premises, or involve the prospect of gaming.

SEN. MOSS inquired if they have members in rural communities.

Mr. Staples stated absolutely, and they are concerned about this issue. Trust is essential to this process.

SEN. McGEE inquired of Mr. DeMarinis if the exhaust air is treated.

Mr. DeMarinis stated that it is not treated; it is pulled straight out of the casino into a heat exchange system.

SEN. McGEE asked **REP. DOWELL** if he believes there will be people back in two years with amendments, if this bill passes this session without any.

REP. DOWELL stated that if there are amendments proposed, it will be against his wishes. He added, "We're all free agents here."

{Tape: 3; Side: A; Approx. Time Counter: 6.5 - 12}

SEN. CROMLEY expressed some concerns to the constitutionality of this bill. He wondered if constitutional concerns have been addressed in other states regarding smoking.

REP. DOWELL declared that he has not heard of other states experiencing problems with the constitutionality.

Mr. Staples spoke about this bill in regard to equal protection grounds. He stated that Florida has a similar bill.

SEN. CROWLEY asked Mr. Langehough why he doesn't permit smoking in his home.

Mr. Langehough replied that he does not like it; it is his choice.

SEN. PERRY asked Dr. Sargent to elaborate on ASRE 62.

Dr. Sargent asserted that he should have received part of ASRE 62. He continued to discuss it further with the Committee.

SEN. PERRY asked him about liability issues involved with ASRE.

Dr. Sargent attested that it is absolutely a liability issue.

SEN. PERRY inquired into a statistical analysis that was done during the Helena smoking ban.

Dr. Sargent declared that they went out and found an expert statistician to administer this study.

SEN. PERRY asked Mr. DeMarinis to expand on what ANSI and ASRE are.

Mr. DeMarinis stated that ASRE is a technical organization that gives guidance to heating and air conditioning engineers. It stands for American Society of Refrigeration Engineers. He said that ANSI stands for American National Standards Institute. They develop a lot of standards. He commented that he is not real familiar with ANSI.

{Tape: 3; Side: A; Approx. Time Counter: 12 - 22.5}

SEN. PERRY commented on high-rise hotels as well as large housing areas. He wondered if all of these establishments use the ASRE system.

Mr. DeMarinis declared that primarily he would say that is true.

SEN. PERRY asked him what the difference in ventilation systems would be between a high-rise casino in Las Vegas versus a bar in Montana.

Mr. DeMarinis stated that many of the establishments are quite similar. He mentioned that the air ventilation systems would be much bigger in an establishment such as a high-rise casino in Las Vegas.

SEN. PERRY inquired into the quality of air in an establishment utilizing the system he presented and **REP. McKENNEY**'s proposals.

Mr. DeMarinis stated that he believes it is possible to get approximately a 90% smoke-removal quality.

SEN. SHOCKLEY asked **REP. DOWELL** why this law would exempt bars and restaurants, but not other establishments that allow smoking.

REP. DOWELL stated that he does not foresee a problem in **SEN. SHOCKLEY**'s law firm, unless clients complain and bring a case before the Health Department.

CHAIRMAN WHEAT asked Mr. Staples about the issue that some tavern owners support this bill and other tavern owners do not.

Mr. Staples asserted that without a proper computer system, he is unable to provide this information.

CHAIRMAN WHEAT sought information about the amendment proposed by **REP. McKENNEY** to bring in some type of air ventilation system.

Mr. Staples compared this dynamic to United States versus Russia. He explained the circumstances in which he would oppose the bill. Otherwise, the arguments for this bill are very convincing and he will support the bill.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 5.6}

Closing by Sponsor:

REP. DOWELL discussed the comments made as well as the proposed amendments. He encouraged the Committee to reject the amendments; the bill will fail if they are accepted.

EXECUTIVE ACTION ON HB 374

{Tape: 3; Side: B; Approx. Time Counter: 5.6 - 10.2}

Motion: SEN. CROMLEY moved that HB 374 BE CONCURRED IN.

Discussion: SEN. CURTISS commented on the fiscal note. She stated that she has a problem with the issue of capacity for those arrested.

SEN. CROMLEY stated that due to the amendment, there would no longer be that fiscal impact.

SEN. LASLOVICH wished to convey that it should be applicable if anybody is in the vehicle, not simply a minor under the age of 16 years old.

SEN. CROMLEY stated that he can sympathize with **SEN. LASLOVICH.** He commented that this is not a DUI issue, it is child endangerment. It is really a different crime.

SEN. MANGAN asserted that he concurs with **SEN. CROMLEY.** He provided a story which aids in his testimony.

{Tape: 3; Side: B; Approx. Time Counter: 10.2 - 17.1}

SEN. SHOCKLEY stated that the previous testimony only strengthens his point.

SEN. McGEE had a procedural question. He wondered when this needs to be decided on. He commented that he would like to amend it to a $10,000 fine for first-time DUI offenders. He asked for a show of hands on the idea of postponing action on this bill.

Ms. Lane attested that the amendment would have to surround the issue of minors; that is what this bill is about.

SEN. McGEE stated that this bill deals with a punishable offense since the person is caught in the act.

Vote: Motion carried 11-1 with SEN. O'NEIL voting no. SEN. ELLINGSON voted by proxy.

EXECUTIVE ACTION ON HB 643

{Tape: 3; Side: B; Approx. Time Counter: 17.1 - 22}

Motion: SEN. CROMLEY moved that HB 643 BE CONCURRED IN.

Motion: SEN. SHOCKLEY moved that AMENDMENT HB064302.and BE ADOPTED.

{Tape: 3; Side: B; Approx. Time Counter: 22 - 22.9}

Discussion: SEN. MANGAN asserted that he supports the amendment in regard to the economic impact.

SEN. CROMLEY stated that he opposes the amendment. The primary issue is that if they support the amendment, they will kill the bill; he supports the bill.

SEN. CURTISS declared that she supports the amendment. She believes there should be a significant fiscal note.

SEN. MOSS stated that she cannot support the amendment. This bill is too important. She wished to express her appreciation for all of the hard work that has been done by so many individuals.

CHAIRMAN WHEAT attested that they should take a look at what happened last cycle. Many people have looked at the realities of what will happen. They need to respect the efforts of both sides to come to this agreement. They cannot kill the bill.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 4.1}

SEN. SHOCKLEY made closing arguments on these amendments. He explained why he believes this should pass.

Vote: Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MANGAN, SEN. MCGEE, SEN. O'NEIL, and SEN. SHOCKLEY voting aye. SEN. ELLINGSON and SEN. MANGAN voted by proxy.

SEN. CURTISS stated that she respects the work that has been done. However, she cannot support this bill; there are no teeth in the bill.

SEN. O'NEIL addressed the amendments and stated that he opposes this bill.

SEN. CROMLEY supports this concept. He also commented on the substantial health issue as well as property taxes.

SEN. SHOCKLEY stated that people know if a place is smoky, they are risking their health. He believes it is an issue of property rights.

Motion: SEN. MCGEE moved that A CONCEPTUAL AMENDMENT BE ADOPTED.

Discussion: SEN. PERRY spoke about Page 7, Line 10. He wished to discuss this language.

CHAIRMAN WHEAT asked Mr. Staples to clarify the language.

Mr. Staples commented on the portions dealing with the areas affected as well as the timeframe.

SEN. PERRY stated it was still somewhat vague.

CHAIRMAN WHEAT reminded the Committee that this a very delicate, compromised bill.

{Tape: 4; Side: A; Approx. Time Counter: 4.1 - 15.6}

SEN. PERRY wished to point out that they are doing some strange things in this bill. He expressed some disbelief at what is happening with several different bills.

CHAIRMAN WHEAT reminded **SEN. PERRY** that they represent everybody. It is important to hear everyone and make compromises.

SEN. McGEE asked **REP. DOWELL** to take a look at Page 7, Lines 9-11. He wondered if this would go into effect October 1, 2005.

REP. DOWELL agreed that it would go into effect on that date. He also clarified the process of this language.

Ms. Lane expanded on the language in Subsection 4, on Page 7.

Vote: **Motion carried 10-2 by voice vote with SEN. ELLINGSON and SEN. MANGAN voting no. SEN. ELLINGSON and SEN. MANGAN voted by proxy.**

Vote: **Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. O'NEIL, and SEN. SHOCKLEY voting no. SEN. ELLINGSON and SEN. MANGAN voted by proxy.**

{Tape: 4; Side: A; Approx. Time Counter: 15.6 - 20.9}

ADJOURNMENT

Adjournment: 12:07 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

KIM LEIGHTON, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT(jus72aad0.PDF)

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 4-5-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 4-5-05 BILL NO. HB 643 NUMBER 1

MOTION: Amendment

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)		X
SEN. AUBYN CURTISS (R)	X	

5 7

PROXY VOTE

I, the undersigned, hereby authorize Senator Cromley to vote my proxy on any issue before the Senate Finance Committee held on 4/5/05, 2005.

HB643 - AYE

No to any other amendments other than McKenney's

SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator WATTS to vote my proxy on any issue before the Senate JUDICIARY Committee held on 4/5, 2005.

YES ON 374
YES ON 643
NO ON AMDS TO 643

JON ELLINGSON
SENATOR
STATE OF MONTANA

Exhibit No. 2
Date 4-5-05
HB 643

In Support of HB 643

Eliminate smoking in enclosed public places

Dear Senator:

A compromise has been reached by the health, tavern and gaming industries regarding HB 643. As currently constituted, without amendments, everyone listed is comfortable with the content.

When adopted 99.5% of Montana will benefit from a comprehensive clean indoor air bill. The remaining .5% will come on board in four years. Once adopted, health care costs will begin to diminish, including the $200 million plus annual taxpayer dollars we now spend annually on Medicaid to care for those injured by tobacco. The health of Montana's youth, families and workers plus the reasonable standards proposed for the tavern and gaming industries are the paramount reason we support HB 643. The potential huge taxpayer savings on health costs also adds to the reasons for our support:

It is a rare occurrence when such divergent groups can agree on a bill. Neither side is happy with certain provisions, but both sides recognize unless HB 643 is adopted without additional amendments, there may be a very expensive and bitter initiative battle. One side will win the initiative and the losing side will have to live with the pain. Read HB 643 as currently constituted and then join us in finally moving this issue off the legislative agenda and into Montana history.

- **Montana Hospital Association**
- **Montana Medical Association**
- **Montana Dental Association**
- **Montana Public Health Association**
- **Local Public Health Officers Group**
- **Montana Council for Maternal and Child Health**
- **Montana Nurses Association**
- **League of Cities & Towns**
- **American Heart Association**
- **Billings Deaconess Hospital**
- **Montana Public Health Assn**
- **American Lung Association of the Northern Rockies**
- **Montana Senior Citizen's Assn.**

EXHIBIT NO. 3
DATE 4-5-05
SB HB 643

AMERICAN LUNG ASSOCIATION®
of the Northern Rockies

Secondhand Smoke: The Science

The attached information is provided by ANR (Americans For Nonsmoker's Rights) October, 2004

It includes sources and scientific references.

Provided to the Montana Senate by Dick Paulsen
Executive Director, American Lung Association of the Northern Rockies

April 5, 2005

ANR AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

SECONDHAND SMOKE: THE SCIENCE

October 2004

- The United States Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke (SHS) or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.[1]

- A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease.[2]

- The 1999 National Cancer Institute Monograph 10, based on the 1997 Cal-EPA (Environmental Protection Agency) review of population-based studies, confirmed that SHS is fatal and has numerous non-fatal health effects. SHS chemicals include irritants and systemic toxicants, mutagens, and carcinogens, and reproductive and developmental toxicants. More than 50 compounds in tobacco smoke are known carcinogens. SHS exposure causes lung and nasal sinus cancer, heart disease, and Sudden Infant Death Syndrome. Serious impacts of SHS on children include asthma induction and exacerbation, bronchitis and pneumonia, middle ear infection, chronic respiratory symptoms, and low birth weight.[3,4]

- SHS is the third leading cause of preventable death in this country, killing 53,000 nonsmokers in the U.S. each year. For every eight smokers the tobacco industry kills, it takes one nonsmoker with them.[5,6]

- SHS is a major source of PM [particulate matter] pollution – a risk factor for pulmonary disease, asthma, and lung cancer – and that three cigarettes smouldering in a room emits up to 10-fold more PM pollution than an ecodiesel engine. The study concluded that high levels of PM exposure from SHS may account for frequent episodes of short term respiratory damage in nonsmokers.[7]

- Secondhand smoke exposure during childhood has been associated with an increased risk of spinal pain, such as neck pain and back pain in adult life. Researchers suggest this may be due to the negative effects of smoke exposure during childhood on the developing spine.[8]

- The excess risk of coronary heart disease (CHD) associated with passive smoking is 50-60%, twice what was previously thought by researchers, and the risks of CHD for passive smoking are virtually indistinguishable from active smoking. A study published in the July 2004 edition of the *British Medical Journal* found higher risks of CHD because, rather than using marriage to a smoker or working in a smoky environment as their measure of exposure, the study's authors used plasma cotinine (metabolized nicotine), a direct biochemical measure of total SHS)exposure. By doing so, they captured SHS's entire exposure effect.[9]

2530 San Pablo Avenue, Suite J • Berkeley, California 94702 • (510) 841-3032 / FAX (510) 841-3071
www.no-smoke.org • anr@no-smoke.org

- Even a half hour of secondhand smoke exposure causes heart damage similar to that of habitual smokers. Nonsmokers' heart arteries showed a reduced ability to dilate, diminishing the ability of the heart to get life-giving blood. In addition, the same half hour of secondhand smoke exposure activates blood platelets, which can initiate the process of atherosclerosis (blockage of the heart's arteries) that leads to heart attacks. These effects explain other research showing that nonsmokers regularly exposed to SHS suffer death or morbidity rates 30% higher than those of unexposed nonsmokers.[10,11]

- The 1986 *Report of the Surgeon General*; the 1986 National Research Council report, *Environmental Tobacco Smoke: Measuring Exposures and Assessing Health Effects*; and the 1992 U.S. Environmental Protection Agency report, *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders*, established that SHS exposure causes lung cancer.[12,13]

- The 2002 Environmental Health Information Service's *10th Report on Carcinogens* classifies SHS as a Group A (Human) Carcinogen — a substance known to cause cancer in humans. There is no safe level of exposure for Group A toxins. In addition, the 2002 World Health Organization International Agency's (IARC) *Monograph on Tobacco Smoking, both Active and Passive* concluded that nonsmokers are exposed to the same carcinogens as active smokers.[14,15]

- In 1991, data showed that nearly 90 percent of the U.S. population had measurable levels of serum cotinine in their blood. In 2002, the Centers for Disease Control and Prevention's National Report on Human Exposure to Environmental Chemicals found more than a 75 percent decrease in median cotinine levels for nonsmokers in the U.S. since 1991— an indication that smoke-free environments significantly reduce exposure to SHS.[16,17]

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[11] Burghuber, O., et al. "Platelet sensitivity to prostacyclin in smokers and non-smokers," *Chest, 90: 34-38*, 1986.

4
4-5-05
HB 643

AMERICAN LUNG ASSOCIATION®
of the Northern Rockies

Secondhand Smoke: Ventilation and Air Filtration References

- **The Science – December 2004**
- **What Air Filtration Companies and the Tobacco Industry are Saying December 2004**
- **Ventilation Technology Does Not Protect People From Second Hand Tobacco Smoke – *Campaign for Tobacco Free Kids***
- **Don't Buy The Ventilation Lie – December 2004**

All attached information includes sources and scientific references.

Provided by Dick Paulsen, Executive Director

April 5, 2005

AMERICANS for NONSMOKERS' RIGHTS

Ventilation and Air Filtration: The Science

PDF Format

December 2004

- A study published in the September 2004 edition of the Journal of Occupational and Environmental Medicine compared the indoor air quality of a casino, six bars, and a pool hall in Wilmington, Delaware, before and after the implementation of a smokefree law. The study found that the ventilation technology installed in these establishments did not protect the workers and the public, as secondhand smoke contributed 85-95% of the carcinogen PPAH, and 90-95% of the respirable particulate air pollution into the air. These contamination levels greatly exceed those encountered on major truck highways and polluted city streets.[1]

- In less than two hours after New York's smokefree law went into effect and smoking stopped, the level of respirable particulate matter (PM) dropped to 15 percent of the level on a smoking night in restaurants and bars. Three months after the law became effective, the level of PM dropped by 90 percent in these venues. Prior to the smokefree law's implementation, New York hospitality employees working an eight hour shift, 250 days a year, were exposed to particulate matter levels seven times greater than the maximum level deemed as acceptable by the U.S. Environmental Protection Agency. In addition, PM dropped an average of 77 percent after the law went into effect in bowling alleys, pool halls, and bingo halls.[2]

- The 2002 Environmental Health Information Service's 10th Report on Carcinogens classifies SHS as a Group A (Human) Carcinogen--a substance known to cause cancer in humans. There is no safe level of exposure for Group A toxins.[3]

- The 1986 Surgeon General's report on involuntary smoking concluded that, "the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to ETS [environmental tobacco smoke]."[4]

- Using current indoor air quality standards, ventilation rates would have to be increased more than a thousand-fold to reduce cancer risk associated with ETS to a level considered acceptable to federal regulatory agencies. Such a ventilation rate is impractical since it would result in a virtual windstorm indoors.[5,6]

- "Separation of smoking areas does not protect the workers and occupants within the smoking area. When separation is properly done (and this is not common), it can reduce the exposure of occupants in the nonsmoking areas, but there is no quantitative assurance that the remaining exposure meets any current health standard or goal."[7]

- "[T]o be at all effective in reducing the concentration of smoke in a space, any air cleaner must process many room air volumes per hour.... [E]ven large, expensive air cleaners with efficiencies for captured particles are capable of reducing, but not eliminating the environmental tobacco smoke tar particles in room air, and are not at all effective for gases, which contain most of the irritants.... [E]ven expensive particulate air cleaners cannot remove enough tar particles in room air to eliminate the cancer risk from environmental tobacco smoke. In general, filtration of indoor air to remove environmental tobacco smoke contaminants is futile - like trying to filter a lake to control water pollution."[8]

- Ventilated smoking rooms leak smoke into the rest of the building, harming everyone in the building. A recent research study conducted by and published for the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) "showed that up to 10 percent of smoking room air enters non-smoking areas just by opening and closing of a swing type entry door.... With supply and exhaust air flow that are practical for small smoking rooms, leaving the smoking room door open results in a large flow of air to adjoining non-smoking areas. To prevent this, smoking room doors should be equipped with an automatic closure mechanism."[9]

- "Changes in ventilation rates during smoking do not have a significant influence on the air concentrations of tobacco components. This means, in effect, that efforts to reduce indoor air pollution through higher ventilation rates in buildings and homes would hardly lead to a measurable improvement of indoor air quality."[10]
- "[I]t is noted that the specific amount of additional ventilation cannot be determined until cognizant health authorities have determined an acceptable level of environmental tobacco smoke (ETS).... An appendix ... provides a method to allow designers to determine additional ventilation over what would be provided in a similar non-smoking area. However, this additional ventilation is for the purpose of odor control only."[11]
- "In managing workplace ETS risks, smoking policies such as separating smokers from nonsmokers in the same space or on the same ventilation system expose nonsmokers to unacceptable risk."[12]

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ANR AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

DON'T BUY THE VENTILATION LIE

November 2004

> ***"Promote improved ventilation as the best solution and a better approach than smoking restriction legislation."***
> *-- Philip Morris (1989)*
> (Bates No: 2022710093-0129, http://legacy.library.ucsf.edu/tid/zdi58e00)

Ventilation does not eliminate the health risks caused by secondhand smoke. There is a consensus among public health authorities, scientists, technical experts (even those funded by the tobacco companies), and air filtration companies that ventilation cannot eliminate the death and disease caused by secondhand smoke exposure.[1] Despite this indisputable fact, tobacco companies, including Philip Morris, R.J. Reynolds, and Lorillard Corporation, have developed a number of strategies to find "comfort and balance for both non-smokers and smokers"[2] (coined as "accommodation"), by keeping them together in the same smoke-filled spaces. Over the years, the tobacco industry's "accommodation" has developed into a variety of different forms, ranging from the separation of smoking and nonsmoking sections, media relations programs, and ventilation.

Smokefree advocates and supporters should be on the look out for ventilation experts and manufacturers touting ventilation as a viable solution to smokefree environments.

WHY DOES BIG TOBACCO PROMOTE VENTILATION?

The ventilation "solution" was created in the early 1980s in order "to defeat mandatory and voluntary smoking restrictions... [and] to slow the decline of [the] social acceptability of smoking."[3] As smokefree policies have become commonplace across the country, tobacco companies have developed programs to thwart smokefree efforts, as evidenced by their own statements:

- "Opportunities remain to achieve accommodation in hospitality, workplaces and selected other public places through a combination of: Ally development, Ventilation technologies, Communications programs."[4]

- "Encourage the introduction and passage of bills and ordinances setting acceptable ventilation standards."[5]

- "Create a model indoor air quality bill to be added to suggested state legislation book published annually. Model bill will focus on ventilation, filters, inspections, etc. Smoking will not be dealt with directly."[6]

- "Conduct indoor air quality briefings with key lawmakers and existing and potential allies to encourage their support of legislative efforts concerning ventilation standards."[7]

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HOW DOES BIG TOBACCO MAKE VENTILATION LOOK GOOD?

CHALLENGE THE SCIENCE OF SECONDHAND SMOKE

"Strategy: Increase awareness of the true nature of indoor air pollution. Promote improved ventilation as the best solution and a better approach than smoking restriction legislation."
-- Philip Morris (1989)
(Bates No: 2022710095-0129, http://legacy.library.ucsf.edu/tid/zdl58e00)

The tobacco industry often contracts with external engineers and scientists, who are seemingly credible individuals working for reputable institutions, to research ways to challenge the science of secondhand smoke. According to Philip Morris, there is a need to "Encourage continued participation of ETS [environmental tobacco smoke] scientists in briefings, publications, seminars and other efforts that point to environmental tobacco smoke as a minor indoor air quality factor."[8]

These researchers are instructed by the tobacco companies to categorize tobacco smoke with other indoor air pollutants, such as mold and dust, in hopes of shifting discussion away from secondhand smoke, so that "Smoking would not be dealt with directly."[9] By lumping secondhand smoke with other indoor air pollutants, the tobacco industry seeks to project the impression that ventilation remedies the problem of secondhand smoke exposure just as it does with other airborne contaminants, and that it is unnecessary to eliminate the problem at its source by creating smokefree environments.

- **George Benda and the Chelsea Group**, www.chelsea-grp.com, have frequently presented themselves as independent "indoor air quality" experts when, in fact, they are consultants for Philip Morris. Chelsea Group staffers frequently show up in communities considering a smokefree law to mobilize opposition within the hospitality sector and to promote ventilation at lawmaker meetings and hearings. Benda and the Chelsea Group have appeared across the United States, from Honolulu, Hawaii, to Anchorage, Alaska. Whatever the community, the Chelsea Group's objective is the same: to "perform services related to the Strategic Technical Support Program ('STS')," which include "recommending methods for accommodating smokers and non-smokers," "identify and select...demonstration sites for the STS Project," "supervise site visits and implementation of the STS Protocol and obtain all necessary releases to use the data collected during site visits," "submit a paper to ASHRAE," and "provide access to Chelsea Group representatives and subcontractors upon request of an authorized Philip Morris representative for presentation and testimony." For these tasks, the Chelsea Group received $200,000 in 1993.[10]

- **Elia Sterling of Theodore D. Sterling & Associates, Ltd.**, www.sterlingiaq.com, has ties to the tobacco industry dating back to 1968, at least. Sterling has been the recipient of $287,000 in tobacco industry "special project" money to create studies that are used to promote ventilation as a solution to smokefree environments.[11,12] Sterling also works with the American Gaming Association and the tobacco companies to lobby the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), an international body which creates heating, ventilation, and air conditioning standards frequently adopted by state and local governments and given the weight of law, to tailor their indoor air quality standards to

accommodate for secondhand smoke.[13] On repeated occasions, Sterling has testified on behalf of the industry.[14]

- **Roger Jenkins and Oak Ridge National Laboratory (ORNL)** have well documented ties to the tobacco industry. While ORNL is a government laboratory, researchers also engage in private contracts, which do not have official government standing. ORNL consistently contracts with the tobacco industry through Roger Jenkins, an ORNL chemist who performs research on tobacco smoke and secondhand smoke exposure. In 1993, Jenkins received $797,892 from the Tobacco Institute's Center for Indoor Air Research (CIAR).[15] Michael Guerin, administrator for ORNL's analytical chemistry division, received more than $1 million from the Council for Tobacco Research and CIAR.[16] ORNL continues to conduct tobacco industry-funded studies on secondhand smoke exposure. In 2003, ORNL announced plans to conduct a study of indoor air pollution levels, including secondhand smoke, financed with $750,000 from Philip Morris USA;[17] and in June 2004, ORNL announced a new study that will look at the effects of three indoor air pollutants, including secondhand smoke, on heart rate variability. The two-year study is being conducted by Dr. Jenkins and is being funded by Philip Morris.[18]

CREATE FRONT GROUPS

"Where necessary, identify and work with indoor air quality allies in preparing legislation establishing acceptable ventilation standards... Conduct indoor air quality briefings with key lawmakers and existing and potential allies to encourage their support of legislative efforts concerning ventilation standards... Encourage indoor air quality allies to participate in existing state ventilation study commissions and promote improved ventilation standards as an effective response."

– Philip Morris (1989)

(Bates No: 2022710093-0129, http://legacy.library.ucsf.edu/tid/zdf58e00)

Knowing that the industry lacks public credibility, tobacco companies create ventilation front groups to influence the hospitality sector and to keep lawmakers from supporting smokefree policies.

- **USA Places Programs:** In 1998, Philip Morris created the "Places Program" to organize and mobilize leaders and influential players within the ventilation and hospitality industries to act as spokespeople for ventilation on behalf of the tobacco industry. These leaders, or "USA Place Team", are responsible for creating a ventilation demand within their respective business sectors by conducting "ventilation education for business owners." A Philip Morris document states: "Ideally, the technical leader also works to develop PM [Philip Morris] relationships with IAQ/HVAC professional organizations, academia, standard-setting and government bodies, technology manufacturers and market leaders in ventilation delivery, such as engineers, contractors, power companies, and others that may impact the development and delivery of ventilation options and acceptance of ventilation options as an alternative to bans."[19]

- **atmosphere*PLUS*:** In 1998, atmosphere*PLUS* was created and commissioned by Philip Morris and marketed as "a program for the National Licensed Beverage Association [NLBA]"[20] to "protect business owner choice."[21] In 1999, Debra Leach, executive director of the NLBA, issued a press release introducing the program.[22] However, prior to the press release's launch, PM recommended Leach credit the NLBA for "spearheading the effort [with the introduction of its atmosphere*PLUS* program]," stating that "We [NLBA] are fortunate that Philip Morris USA has agreed to serve as our initial sponsor for this initiative and is lending financial and hands on support."[23]

- ***Options*:** In 1999, Philip Morris, in collaboration with ventilation consultants, manufacturers and hospitality industry organizations, launched *Options*, a web-based ventilation consultation resource designed to mislead lawmakers, business owners and the public; to create the perception that ventilation can address the issue of secondhand smoke; and, therefore, to advocate that smokefree air policies are unnecessary. Its stated goal was "to help businesses that choose to allow smoking find effective, practical ways to provide comfort for both non-smoking and smoking customers. [*Options*] will help you create comfortable environments, improve ventilation and learn more about industry trends."[24] In 2003, the *Options* program dissolved.

- **The Hospitality Coalition on Indoor Air Quality (HCIAQ)**, www.hciaq.org, is a front group organized and funded by Philip Morris to carry its ventilation message.[25] Black, Kelley, Scruggs, and Healy – a Washington based public affairs subsidiary of Philip Morris' public relations firm Burson-Marsteller – created HCIAQ in 1999.[26] The stated goal of HCIAQ is to: "Educate regulators and legislators at the local, state, and national levels, and general public, on the costs to the hospitality industry of one-size-fits-all IAQ regulations and legislative solutions."[27] HCIAQ is comprised of representatives of tobacco industry-allied organizations in the hospitality, gambling, and ventilation fields.

LOBBY ASHRAE

"ASHRAE recently approved a standard.... The hooker is that, by designating an entire building as a 'no smoking building', no added expense at all would be involved.... It is mind boggling to attempt to calculate the harm that this code would have done to our company and our industry had it been adopted."

– Bob Moore, Philip Morris (1983)

(Bates No. 1003656769-6770, http://legacy.library.ucsf.edu/tid/boi28e00)

The tobacco industry has been trying to give its ventilation "solution" the weight of law by lobbying and infiltrating ASHRAE. Currently, the tobacco companies are working with the American Gaming Association – a member[28] of the Philip Morris' HCIAQ front group[29] – and the National Restaurant Association – a former member of HCIAQ – to lobby ASHRAE to create separate ventilation standards, which include smoking, for hospitality venues.

If smokefree opponents advocating ventilation as a solution appear in your community, contact ANR for assistance.

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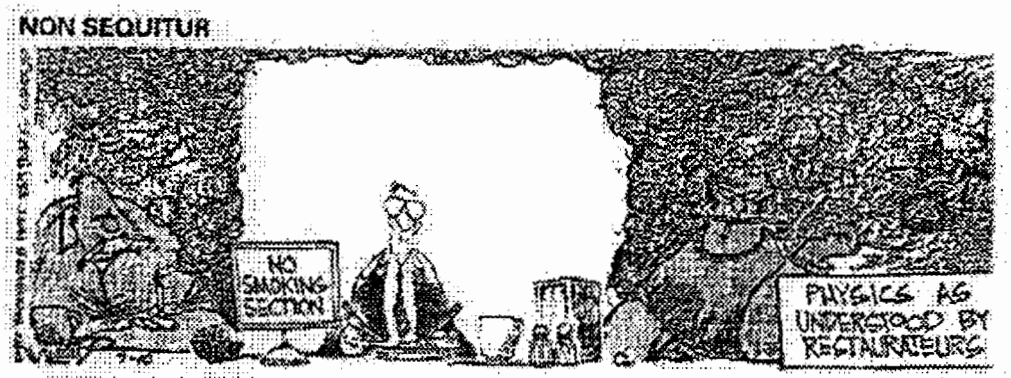
CAMPAIGN for TOBACCO-FREE Kids

VENTILATION TECHNOLOGY DOES NOT PROTECT PEOPLE FROM SECONDHAND TOBACCO SMOKE



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As this political cartoon from 1992 illustrates so well, the ventilation "solutions" to the problems posed by secondhand smoke that the tobacco industry, its allies, and others have proposed over the years fall far short of the mark of protecting the health of non-smokers.

Even though the tobacco industry has pushed ventilation technology without much success for years as a sensible, reasonable, and common sense solution to accommodate the interests and needs of both smokers and non-smokers in indoor environments[1], the industry has recently redoubled its claims that there are "new and emerging technologies" that make it unnecessary to create smoke free environments.

However, while sounding reasonable, the problem with the ventilation "solution" is that based on current scientific information, even the newest ventilation technologies under ideal conditions are incapable of removing all secondhand smoke and its toxic constituents from the air.[2] Therefore, the scientific evidence is clear: ventilation technology does not serve as an alternative to eliminating exposure to secondhand smoke as the best strategy to protect people's health.

While there may be the potential for reducing levels of exposure to secondhand smoke using current ventilation technology, there remains no scientific evidence or consensus about whether there is any safe level of exposure.[3] And no credible scientific, medical, or engineering authority has claimed that ventilation is capable of protecting people's *heath* from the toxins in secondhand smoke. Until such consensus develops (if ever), ventilation technology as a "solution" to secondhand smoke is inadequate and only laws that prohibit smoking in indoor environments can guarantee safe levels of exposure to secondhand smoke.

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What does the tobacco industry say about ventilation and health?

Philip Morris U.S.A. - While the tobacco industry presents ventilation as a "solution" to the problems of secondhand smoke and urges restaurants to spend tens of thousands of dollars on complex systems that don't solve the problem of exposure to secondhand smoke, Philip Morris (in the fine print) admits that these systems do not protect health – "*Options*, Philip Morris USA does not purport to address health effects attributed to environmental tobacco smoke."[4] March , 2001)

George Benda, CEO, Chelsea Group, Ltd. (ventilation consultant to Philip Morris U.S.A.) – The following quotes are taken from testimony by Mr. Benda at a Mesa, Arizona City Council hearing:

1. In response to a question about whether or not proposals for ventilation technology solutions are based on old technology (that independent government and engineering experts have concluded are incapable of removing all the harmful properties of secondhand smoke from indoor spaces), Mr. Benda stated, "... it is the same technology we've all known."[5]

2. In addition, Mr. Benda stated that building ventilation systems are designed to operate in a specific manner and that any alterations to the building could impact the effectiveness of the ventilation system. Due to these built-in design factors in all buildings, to renovate these systems in a way that even attempts to remove all secondhand smoke contaminants from the air would require every building owner to "restructure the entire building" and that such major retrofits would cost "tens of thousands of dollars."[6] In comparison, smoke free indoor air laws are free.

What do the people who make ventilation equipment say about ventilation and health?

Honeywell, Inc. (leading industry manufacturer of ventilation products) – "We stand by the efficiency and quality of our air cleaners as comfort and convenience products, but we are not making claims that these are health products."[7]

"Q: Will filtering eliminate all health hazards known to occur with exposure to ETS?
A: Honeywell has not in the past and does not make health hazard claims."[8]

"Q: If filtering does not eliminate all health hazards, to what degrees are those hazards reduced?
A: Honeywell has not data to support health hazard claims."[9]

What do the experts say about ventilation technology?

Occupational Safety and Health Administration (OSHA) - "... from the industrial hygiene perspective, general ventilation as delivered by heating, ventilation and air condition (HVAC) systems, is not an acceptable engineering control measure for controlling occupational exposures to [environmental tobacco smoke] ETS."[10]

ASHRAE Standard 62-1999, Addendum 62e – The purpose of this standard is to "... specify minimum ventilation rates and indoor air quality that will be acceptable to human occupants ..."[11] and it assumes nonsmoking environments everywhere except bars and casinos.

"Since the last publication of this standard in 1989, numerous cognizant authorities have determined that ETS is harmful to human health. These authorities include, among others, the United States Environmental Protection Agency, World Health Organization, American Medical Association, American Lung Association, National Institute of Occupational Safety and Health,

National Academy of Sciences, Occupational Safety and Health Administration, and the Office of the U.S. Surgeon General."[12]

It is important to note that several tobacco companies, including R.J. Reynolds Tobacco Company and Philip Morris U.S.A., appealed various parts of the ASHRAE 62-1999, Addendum 62e standard. All of these appeals have been rejected and in a letter dated July 12, 2000, the American Standards Institute's Board of Appeals informed Philip Morris that it rejected their appeal and stated that the "ASHRAE Addendum 62e remains an approved American National Standard."[13]

U.S. Environmental Protection Agency (EPA) – "EPA recommends that every company have a smoking policy that effectively protects nonsmokers from involuntary exposure to tobacco smoke. Prohibiting smoking indoors or limiting smoking to rooms that have been specially designed to prevent smoke from escaping to other areas of the building are two options that will effectively protect nonsmokers ... If smoking is permitted indoors, it should be in a room that meets several conditions:

1. Air from the smoking room should be directly exhausted to the outside by an exhaust fan. Air from the smoking room should not be re-circulated to other parts of the building. More air should be exhausted from the room than is supplied to it to make sure ETS doesn't drift to surrounding spaces.

2. The ventilation system should provide the smoking room with 60 cubic feet per minute of supply air per smoker. This air is often supplied by air transferred from other parts of the building, such as corridors.

3. Nonsmokers should not have to use the smoking room for any purpose. It should be located in a non-work area where no one, as part of his or her work responsibilities, is required to enter."[14]

National Institute of Occupational Safety and Health (NIOSH) – "In indoor workplaces where smoking is permitted, [secondhand smoke] can spread throughout the airspace of all workers. The most direct and effective method of eliminating ETS from the workplace is to prohibit smoking in the workplace. Until that is achieved, employers can designate separate, enclosed areas for smoking, with separate ventilation. Air from this area should be exhausted directly outside and not re-circulated within the building or mixed with the general dilution ventilation for the building." [15]

Repace Associates, Inc. (secondhand smoke consultants) – "... it is clear that dilution ventilation, air cleaning, or displacement ventilation technology even under moderate smoking conditions cannot control ETS risk to *de minimis* levels for workers or patrons in hospitality venues without massively impractical increases in ventilation ... Smoking bans remain the only viable control measure to ensure that workers and patrons of the hospitality industry are protected from exposure to the toxic wastes from tobacco combustion."[16]

Conclusion: Based on the overwhelming body of scientific evidence:

1. ***Ventilation technology does not protect people from the dangers posed by secondhand tobacco smoke. The simplest and cheapest way to protect people from secondhand smoke is to create smoke free environments.***

2. ***States and local governments should not waste taxpayer dollars to fund new reviews to prove something to which we already know the answer.***

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[17] Communication from Janell Siegfried, Honeywell, Inc. to Dr. Clark dated June 12, 2000 in relation to debate over ventilation provision in the Duluth, MN City Council.
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ANR AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

VENTILATION AND AIR FILTRATION: WHAT AIR FILTRATION COMPANIES AND THE TOBACCO INDUSTRY ARE SAYING

December 2004

COMPANIES AGREE THAT VENTILATION SYSTEMS DO NOT ELIMINATE HEALTH RISKS CAUSED BY SECONDHAND SMOKE

- **Allergy Control Products, Inc.:** "Allergy Control Products, Inc. does not claim that air cleaners offered in this catalog will protect people from potential health risks associated with secondhand smoke."[1]

- **Allergy Buyers Club, Inc.:** "Improved ventilation and use of air purifiers may reduce, but will not completely eliminate, your exposure to secondhand smoke and the associated health risks."[2]

- **Brookstone:** "No air purifier can protect against the health hazards associated with secondhand tobacco smoke."[3]

- **Espitech Air Products:** "We make no medical or health claims whatsoever and it is not our intention to do so.... [The] goal or objective of [the] air purification systems that we sell, for use in a smoking environment, is to provide relief from the annoyance of the odour produced by tobacco smoke as well as some of the discomforts that the smoke (fumes) and odour causes. Espitech Air Products disclaims all warranties, implied or otherwise, that anyone (non-smoker or smoker) who installs our air purifiers, air cleaners, or air scrubbers as an alternative to seeking a smokefree environment will be protected from the health risks caused by exposure to second hand smoke."[4]

- **Honeywell:** "Honeywell has not in the past and does not make health hazard claims."[5]

- **IQAir North America:** "[Air filtration] doesn't remove the risk of secondhand smoke. It would reduce the amount of smoke in the air over an amount of time. In my opinion, air cleaners are not going to be a solution. Air cleaners can not reduce the initial exposure [to smoke] and that's where the risk is coming from."[6]

- **Peak Pure Air:** "Nowhere [sic] do we claim that our products eliminate <u>all</u> hazardous contaminants... No! ... not any product on earth will eliminate health hazards cause by exposure to second hand tobacco smoke. After one has been exposed, the damage is done.... In a perfect world we would not need to worry about secondhand tobacco smoke."[7]

- **Radio Shack:** "We make no claims that this product will protect people from second-hand smoke....The Environizer electronic air purifiers do not eliminate such [health] hazards....The Environizer will not help remove gases that are found in tobacco smoke."[8]

- **The Sharper Image:** "No air cleaner can protect against the harmful effects of secondhand tobacco smoke. Clean air begins with a smoke-free environment."[9]

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www.no-smoke.org • anr@no-smoke.org

- **Wein Products, Inc.:** "No air filtration or air purification system has been designed that can eliminate all the harmful constituents of secondhand smoke. A reduction of the harmful constituents of secondhand smoke does not protect against the disease and death caused by exposure to secondhand smoke. The U.S. Surgeon General has determined secondhand smoke to cause heart disease, lung cancer, and respiratory illness."[10]

VENTILATION DOESN'T PROTECT YOUR HEALTH – THE TOBACCO INDUSTRY KNOWS IT

- **Philip Morris USA** carries a disclaimer on its web site under a section entitled "Policies, Practices and Positions – Public Place Smoking" that admits ventilation does not address health issues: "While not shown to address the health effects of secondhand smoke, ventilation can help improve the air quality of an establishment by reducing the sight and smell of smoke and by controlling smoke drift."[11]

- Although the Philip Morris-sponsored ***atmospherePLUS***, a heating, ventilating and air conditioning consulting program, promotes "enhanc[ing] indoor air quality through ventilation," a promotional brochure's fine-print reads: "*atmospherePLUS* does not purport to address health effects attributed to smoking."[12]

- The **Options**, Philip Morris USA web site stated: "Our programs are not intended to address the health effects attributed to secondhand smoke."

REFERENCES

[1] [n.a.]. "[Disclaimer re: Allergy Control Products, Inc.]" *Allergy Control Products, Inc.* [n.d.].

[2] [n.a.], "[Disclaimer re: Allergy Buyers Club]," *Allergy Buyers Club*, [n.d.]. Accessed on December 6, 2004. Download at http://www.allergybuyersclubshopping.com/al40voc.html.

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[4] Lito Espinosa, Sales Manager of Espitech Air Products, "[Espitech letter re: performance of air cleaners and health hazard claims on www.allerairsolutions.com]," *Espitech*, April 14, 2004.

[5] Janell Siegfried, Honeywell representative, "[Honeywell letter re: performance of air cleaners and health hazard claims]," *Honeywell*, June 12, 2000.

[6] Glory Dolphin-Hammes, Executive director of the air filtration company IQAir North America. Quoted in: "Filtration systems help, but can not eliminate smoke," *Northwest Arkansas News*, July 21, 2003.

[7] Edward L. Peacock, President of Peak Pure Air, "[Peak Pure Air letter re: performance of air cleaners and health hazard claims on www.peakpurcair.net]," *Peak Pure Air*, April 9, 2004.

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[9] (n.a.] "[Disclaimer re: air purifiers do not protect against adverse health effects caused by secondhand smoke.]" The Sharper Image. Accessed on May 19, 2004. Download at http://www.sharperimage.com/us/en/catalog/pipmoreshell1_2.jhtml?sku=SI637SNX&pid=58036000.

[10] Stan Weinberg, Chairman and CEO of Wein Products, Inc., "[Disclaimer re: air purifiers do not protect against adverse health effects caused by secondhand smoke.]" *Wein Products, Inc*. Accessed on April 28, 2004. Download at http://www.weinproducts.com/smoke.htm.

[11] [n.a.]. "Policies, Practices & Positions: Public Place Smoking, Reasonable Ways to minimize Secondhand Smoke," *pmusa.com*. Downloaded: October 3, 2003.

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Exhibit 5
Date 4-5-05
HB 643

Amendments to House Bill No. 643
2nd Reading Copy

Requested by Representative Joe McKenney

For the House Committee of the Whole

Prepared by David Niss
March 21, 2005 (1:42pm)

1. Page 7, line 25.
Strike: "AND"

2. Page 8, line 3.
Following: "1996A"
Insert: "; and
(g) a bar in which an air exchanger meeting the requirements of subsection (6) is in use"

3. Page 8.
Following: line 3
Insert: "(6) To meet the requirements of subsection (5)(g), the following must be complied with:
(a) The air exchanger must be manufactured, installed, and used according to the guidelines of the American society of heating, refrigerating and air-conditioning engineers.
(b) The exchanger must remove substantially all tobacco smoke from the bar when the exchanger is being used.
(c) The exchanger must be serviced at least annually in a manner ensuring its operation in accordance with this subsection (6).
(d) The exchanger must be in continuous operation at any time there is anyone in the bar, including an employee.
(e) The bar must have posted in a conspicuous place an affidavit demonstrating installation and an affidavit demonstrating servicing in compliance with the requirements of this subsection (6)."

- END -

everson·cordeiro engineering design, inc.
mechanical·electrical engineers
#12 SIXTH STREET SOUTH · GREAT FALLS, MT 59401 · (406)761-4057

March 17, 2005

Mr. Joe McKinney
Proprietor of Legends Bar and Casino
Great Falls, MT

This is concerning **Filtration in Smoke Control for Bars and Casinos.**

Joe,

This letter is a follow up to our telephone conversation concerning the continuing problem of smoke control in bars and casinos.

As you are aware, Everson Cordeiro Engineering does extensive design in bars and casino smoke control through out the State of Montana for [redacted]

We have designed upwards of 60 -70 heat recovery and ventilation systems for smoke control and environmental air quality standards for bars and casinos through out the State of Montana in their public facilities.

The approach that we have adopted is to follow the manual written by [redacted] Engineering Inc. in Butte, Montana for smoke control and environmental air quality standards for bars, casinos, and lounges.

The system employed is an air replacement system, not an air filtration system. An air filtration system would be a component such as a smoke eater or a bioclimatic air filtration system which treats the air inside the building and recirculates the conditioned air back into the space.

These systems tend to work well when they are new but when they get some age on them they do not seem to perform as well as would be expected for air purification and air quality standards. Also, maintenance is a big factor in air filtration systems, if proper preventative maintenance and continuous maintenance is not performed, the systems fall short of their design standards for air purification and air quality control.

The system we utilize is a cross plated heat exchanger system which isolates the contaminated air from the incoming outdoor ventilation air. The system operates on the principal of exhausting the smoke laden air from the immediate source of the smoke generation and introducing clean air into the building from outside into the room for positive displacement of the foul air from the contaminated area to an exhaust outlet.

For example, in the casino, we would introduce the air in a room as far away from the machines as possible and exhausting the smoke laden air over and behind the casino gambling machine to remove the smoke from the occupied space and from the occupied breathing zone of the casino machine player.

This system also complies with energy conservation standards in that the heat recovery unit absorbs or takes out the heat from the exhaust air being rejected outside the building and uses it to preheat or to temper the incoming air into the space to reduce heat loss or heat gain in either the heating or cooling application, thereby reducing the overall energy requirement to condition the air for door air quality standards.

This system is exceptionally maintenance free in that there are no moving parts and there are no filters or components which would require replacement or cleaning to maintain optimum operation and efficiency for heat transfer in the exhaust to outside air ventilation system.

Our office has been confronted by owners who have had large exhaust systems installed in casinos to remove the smoke and contaminants from the occupied space. The problem with that concept is without air make up into the building you are providing an excess of infiltration of unconditioned air into the building which can create drafts and localized areas of discomfort in the building during extreme winter heating conditions.

I fully stand behind the design parameters using plate type heat exchangers, where ever possible this air displacement system is utilized for air quality standards in public occupied spaces.

If you have any questions concerning this subject, please contact our office.

Sincerely,

Harold Everson

Harold Everson

lcg

6
4-5-05
HB 643

April 6, 2005

Honorable Michael Wheat, Chair
Judiciary Committee
Montana Senate
PO Box 200500
Helena, MT 59620-0500

Senator Wheat and Members of the Committee:

For the record, my name is Kristin Page Nei. I am here today speaking on behalf of the American Cancer Society in opposition to HB643 as amended in the House.

The American Cancer Society is the nationwide community based voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy, and service.

The American Cancer Society set ambitious goals for significantly reducing the rates of cancer incidence and mortality along with measurably improving the quality of life for all people with cancer.

Thirty percent of all cancer related deaths can be attributed to commercial tobacco use, so we support an ambitious agenda to reduce the suffering and preventable deaths accompanying the use of tobacco.

The American Cancer Society supports comprehensive clean indoor air policies, frequently increasing the price of tobacco products and adequately funding a tobacco disease prevention program as our best ways to significantly reduce death and disease caused by tobacco.

We want to publicly thank Representative Dowell for his leadership in the legislature and his willingness to support efforts to improve the health of Montana's citizens with strong clean indoor air legislation. His efforts on behalf of the original HB 643 were much appreciated and we nearly succeeded in the House Committee, overcoming very difficult obstacles.

We regret, however, that we are unable to support the current proposed version of HB 643. Although there may be certain short-term benefits we are sincerely concerned about two specific provisions in the amended bill.

First, as a national organization we have long opposed statewide efforts which preempt local opportunities to improve the health of citizens. Preemption limits our ability to help communities more comprehensively protect themselves and their employees from the dangers of secondhand smoke. Some communities may feel strongly that they need further protections, and the current bill would prevent them from addressing their concerns.

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Cancer Information 1.800.ACS.2345 www.cancer.org

Second, the non-severability clause will allow the whole act to be overturned if one part is found to be invalid. With merely one phrase of the legislation challenged in court and found to be a problem, all our efforts focused on protecting the health of Montana's citizens could be for nothing. We are concerned that, if any part of the legislation is found to be invalid at any time during the period between now and September 30, 2009 we will have lost opportunities to improve the health of Montanans in their local communities with no appreciable gain.

We recommend the committee consider including a phase in of secondhand smoke protections, but which eliminated the non-severability clause and allowed us to work with those local communities interested in further protecting their citizens from secondhand smoke.

We believe these options will provide for legislation that protects the health of all Montanans while allowing a reasonable adjustment period for other parties involved.

Thank you for your consideration of this matter.

Sincerely,

Kristin Page Nei
Montana Director of Government Relations
American Cancer Society, Great West Division

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Cancer Information 1.800.ACS.2345 www.cancer.org

7
Date 4-5-05
Bill No. HB 643

REVIEW

Exposure to secondhand smoke and excess lung cancer mortality risk among workers in the "5 B's": bars, bowling alleys, billiard halls, betting establishments, and bingo parlours

M Siegel, M Skeer

Tobacco Control 2003;12:333–338

See end of article for authors' affiliations

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Received 16 December 2002
Accepted 21 June 2003

Objective: To review existing data on exposure to secondhand smoke in bars, bowling alleys, billiard halls, betting establishments, and bingo parlours (the "5 B's") as assessed by ambient nicotine air concentration measurements and to estimate the excess lung cancer mortality risk associated with this exposure.
Data sources: Using the Medline, Toxline, and Toxnet databases, the internet, and bibliographies of relevant articles, we identified studies that reported measurements of ambient nicotine concentrations in the 5 B's.
Study selection: Studies were included if they reported a mean concentration of ambient nicotine measured in at least one of the 5 B's.
Data extraction: We calculated a weighted average of nicotine concentrations in each of the 5 B's. We then estimated the working lifetime excess lung cancer mortality risk associated with this exposure, as well as with exposure at the upper and lower limits of the range of mean exposures reported in all of the studies in each establishment category.
Data synthesis: Nicotine concentrations in the 5 B's were 2.4 to 18.5 times higher than in offices or residences, and 1.5 to 11.7 times higher than in restaurants. At these exposure levels, estimated working lifetime excess lung cancer mortality risk from secondhand smoke exposure for workers in the 5 B's is between 1.0–4.1/1000, which greatly exceeds the typical de manifestis risk level of 0.3/1000.
Conclusions: Workers in the 5 B's have high levels of occupational exposure to secondhand smoke and must be included in workplace smoking regulations.

Over the past few decades, there have been three overlapping waves in the focus of clean indoor air policy in the USA. In the first wave, policy makers aimed to protect the public from secondhand smoke exposure in public places, such as elevators, movie theatres, retail stores, and public buildings. The second wave of smoking regulations targeted the workplace, but focused on office buildings while exempting service workplaces, such as restaurants and bars. In the third and current wave, attention is finally being given to the service workplace; however, the focus is almost entirely on restaurants, largely ignoring establishments such as bars, bowling alleys, billiard halls, betting establishments, and bingo parlours, which we will term the "5 B's."

Because of this pattern of policy focus, protection of workers from secondhand smoke exposure varies by workplace type. For example, of the 1388 local clean indoor air ordinances in the USA as of May 2002, 75% regulated smoking in workplaces and 67% regulated smoking in restaurants, but only 8% regulated smoking in bars.[1] Similarly, 45 states restrict smoking in workplaces and 30 restrict smoking in restaurants,[2] but as of July 2003, only five have enacted legislation that regulates smoking in bars. Because of this pattern of clean indoor air policy adoption, workers in service workplaces, particularly the 5 B's, do not enjoy the same level of protection from secondhand smoke exposure as the public or those who work in office settings. One reason why these service type establishments have largely been exempt from regulation is the relationship that exists between these establishments and the tobacco industry and the support that the industry has provided to them to help them oppose smoking regulations.[3 4]

Given the lack of protection of workers in the 5 B's, a formal review of the exposure levels and potential health effects of secondhand smoke among these workers is critical; however, we are unaware of any such published review. In 1993, Siegel reviewed the exposure levels and health effects among restaurant and bar workers, reporting that these workers were exposed to substantially higher levels of secondhand smoke than office workers, and concluding that secondhand smoke is a significant occupational health hazard for these workers.[5] Ten years later, while there have been substantial advances in restaurant smoking regulations, little progress has been made in protecting bar workers and it is now clear that there are additional service workers—those in the other 4 B's—who have been neglected. In the USA, there are more than 800 000 workers in bars, bowling alleys, and casinos alone.[6–8] It is therefore time to re-examine the exposure levels and resulting health effects for bar workers and to include workers in bowling alleys, billiard halls, betting establishments, and bingo parlours in order to help guide the future development of clean indoor air policy.

In this paper, we conduct a literature review on secondhand smoke exposure in bars, bowling alleys, billiard halls, betting establishments, and bingo parlours in order to: (1) compare average levels of exposure to secondhand smoke in the 5 B's, as measured by indoor air concentrations of nicotine, to levels of exposure in offices, homes, and restaurants; and (2) estimate the lifetime excess lung cancer mortality risk associated with secondhand smoke exposure among workers in the 5 B's. Because of the small number of studies that have examined secondhand smoke exposure in the 5 B's (and thus the high variability of the existing data), we provide both a point

estimate and an estimate of the lower and upper bound of the plausible range of exposure and mortality risk.

METHODS

Indoor air concentrations of nicotine

We conducted a literature search to identify studies that reported measurements of tobacco constituents in indoor air in free-standing bars, bowling alleys, billiard halls, betting establishments (including casinos and smaller betting shops), and bingo parlours. Three databases—Medline, Toxline, and Toxnet—were searched to identify published studies, and bibliographies from each publication were reviewed to identify additional relevant articles. An internet search was conducted to identify studies published online and to identify additional published studies that may have been missed through the database searches. Additionally, we analysed several published reviews that summarised measurements of tobacco constituents in indoor air, including those by Sterling *et al*,[9] Repace,[10] Repace and Lowrey,[11 12] Hammond,[13] and Guerin.[14]

For the database searches, our search terms were: nicotine (as keyword or subject heading) AND smoke (as keyword or subject heading, or with tobacco smoke pollution as subject heading) AND any one of the following terms: bar, club, nightclub, tavern, pub, billiard, pool, bowling, betting, gambling, casino, or bingo. We also conducted a search that did not require any of the establishment terms but added any one of the terms: measurement, level, or air. For the internet search, we used the Google search engine and searched the first 500 websites obtained by using the search terms nicotine AND smoke AND any of the establishment terms. In addition, we searched all websites using the search terms nicotine AND smoke, and requiring these terms to be in the page title.

Studies were included if they reported the mean concentration of nicotine, obtained via either stationary or personal breathing zone monitors, from measurements taken in one or more worksites within the 5 B's. We defined bars as being free-standing establishments; bar areas of restaurants were not included in this definition. Studies that did not measure nicotine concentrations, or that reported only a range of values without providing data from which a mean could be calculated, were not included in our calculations of mean nicotine concentrations. We identified a total of 18 studies that met these criteria.[15–31]

Because of the possibility of variations in tobacco smoke exposure levels across countries, we included in this analysis only the 13 studies conducted in the USA. Excluded from the analysis, therefore, was one study of bars in England,[17] one study of pubs in Japan,[21] a study of betting establishments in England,[27] a study of bars and nightclubs in Canada,[32] and a bar study in France.[33] However, results from these five studies are similar to those from the US studies, and excluding these studies from the analysis would not have appreciably affected the findings. For comparison purposes, we do present the results of the analyses with inclusion of the non-US studies in the results section; however, the tables and remaining text present results of the US studies only.

A weighted average of the mean nicotine concentrations reported in each of the studies was calculated for each of the 5 B's. The weight given to each study was the number of establishments sampled. These weighted mean nicotine concentrations were compared to weighted mean concentrations calculated in a similar manner for offices, residences, and restaurants that were reported in a previous study.[5] It should be noted that this earlier study included only measurements taken in establishments where smoking was allowed. Weighting by the number of establishments rather than the inverse of the variance within each study was chosen because we desired our results to be less sensitive to a small number of very large studies that conducted multiple measurements within a given establishment (and thus achieved very low variance levels). In addition, weighting by the number of establishments allowed us to include all the identified studies, even those for which a variance estimate was not reported. Finally, using this weighting procedure allowed comparability with our previous review,[5] which enabled us to compare estimates in the 5 B's with those in offices, homes, and restaurants.

Because of the variability of nicotine measurements in the different studies, we felt it important to provide not only an estimate of average exposure, but also an indication of the range of reported exposures. Therefore, we report both the weighted mean nicotine concentrations for each type of establishment and the range of mean nicotine concentrations obtained in all of the studies within each establishment category. Our subsequent lung cancer mortality estimates are then based not only on the mean exposure level, but also on the low and high end of the range of mean exposures reported for the establishments of a given type.

Estimates of excess lung cancer mortality risk

To interpret the potential health effects of secondhand smoke exposure at the levels observed for workers in the 5 B's, we estimated the excess lifetime lung cancer mortality risk for workers in each type of establishment, based on the weighted mean nicotine concentrations in these workplaces and on the low and high end of the range of mean nicotine concentrations reported in all of the studies of these workplaces. Thus, we provide not only a point estimate of predicted excess mortality risk, but a lower and upper bound estimate based on the full range of mean nicotine values reported in the literature.

Lifetime excess lung cancer mortality risk estimates were derived from ambient nicotine concentrations using a formula developed by Repace and Lowrey.[12] This formula estimates excess lung cancer mortality risk over a 40 year working lifetime based on air nicotine concentrations. The risk model on which this formula is based was successful in predicting actual lung cancer risks observed in the Cancer Prevention Study (CPS-I) and its use is discussed and validated by a number of secondhand smoke risk analysis experts.[34] We are not aware of any alternative model that outperforms this method or is based on a better risk model. Alternative methods for estimating non-smokers' excess lung cancer risk based on varying dose–response models have been discussed[35]; however, each of these models produces very similar excess lung cancer risk estimates.[35] We therefore have no reason to believe that the Repace and Lowrey model[12] is not a representative and valid one.

Although Repace *et al* have estimated excess heart disease mortality risk from ambient nicotine levels by multiplying the lung cancer mortality risk by a factor of 10:1,[34 36] we do not estimate excess heart disease mortality risk here, as the time course of these effects is vastly different and a simple linear extrapolation of risk may not be adequate to capture accurately the heart disease risk profile.

We assumed an eight hour per day, five day work week for workers in each of the 5 B's, except for bingo parlour workers, for whom we assumed exposure for a two hour shift twice a week. This assumption is based on our experience of the hours during which bingo parlours typically operate; we are not aware of published data that review the working hours of employees in bingo parlours. Similarly, our experience suggests that a 40 hour work week is a reasonable assumption for workers in each of the other 4 B's, although we are not aware of data that document this.

We estimate excess lung cancer mortality risk over a 40 year working lifetime. It should be noted that many bar workers probably work in these establishments for far less than 40 years. However, our feeling is that an assessment of risk should be based on what the long term risk of working in an establishment over one's working lifetime would be, rather than on the issue of whether transient exposures would be

Table 1 Indoor air concentrations on nicotine (μg/m³) in a variety of workplaces

Type of workplace	Number of studies	Number of establishments sampled	Weighted mean*	Range	Ratio†
Offices[5]	22	940	4.1	0.8–22.1	1.0
Residences[5]	7	91	4.3	1.6–21.0	1.0
Restaurants[5]	17	402	6.5	3.4–34.0	1.6
Betting establishments[12 14 22 26–30]	3	4	9.8	8.0–10.7	2.4
Bowling alleys[11 22 23]	2	6	10.5	10.1–10.7	2.6
Billiard halls[14 23 26]	2	3	13.0	9.8–19.4	3.2
Bars[14–16 18–20 22–25 31]	10	27	31.1	7.4–105.4	7.6
Bingo parlours[22 28]	2	3	76.0	65.5–81.2	18.5

*Mean of average nicotine values reported in individual studies weighted by number of establishments sampled in each study.
†Ratio of weighted mean nicotine concentration in residences, restaurants, bowling alleys, billiard halls, betting establishments, bars, and bingo parlours to weighted mean nicotine concentration in offices.

expected to produce long term health effects. In other words, one could argue that no matter how high the exposure is in bars, if bartenders tend to work in this occupation only for several years, their long term cancer risk may not be particularly high. We do not find this argument to be compelling; we believe that policy decisions must be based on an assessment of the safety of the working conditions over a long period, and the lowered risk among short term workers should not change one's assessment of the risks. Moreover, a large number of workers do invariably work in these establishments for their working lifetimes. Therefore, we estimate excess risks for a full 40 year working lifetime.

RESULTS

Indoor air concentrations of nicotine

The weighted mean air nicotine concentration in bars, bowling alleys, billiard halls, betting establishments, and bingo parlours ranged from 9.8 μg/m³ to 76.0 μg/m³, representing exposure levels that are 2.4 to 18.5 times higher than in offices or residences and 1.5 to 11.7 times higher than in restaurants (table 1). The lowest mean nicotine concentration in any individual study for any of the 5 B's was 7.4 μg/m³, which is higher than the average exposure level for restaurants (6.5 μg/m³) and nearly twice the average level for offices (4.1 μg/m³). The highest mean nicotine level in any individual study was 105.4 μg/m³, measured in a nightclub, and representing an exposure level 16.2 times higher than the average level in restaurants.

Although there were only two studies that reported nicotine concentrations in each of three establishment types—bowling alleys, billiard halls, and bingo parlours—it should be noted that the results of these studies were quite consistent in each category. In addition, despite the variability of the exposure estimates because of the small number of studies, the low end of the range of reported mean nicotine concentrations for each of the 5 B's exceeds the weighted mean nicotine concentration in offices by a factor of 1.8 (for bars) to 16.0 (for bingo parlours), and exceeds the average nicotine concentration in restaurants by a factor of 1.1 to 10.1.

Two identified studies[32–39] were not included in table 1 because they did not meet our inclusion criteria—one[37] reported only a range of nicotine values and the other[38 39] did not separate measurements taken in free-standing bars from those taken in bar areas of restaurants. However, both study results were consistent with values reported in table 1. Coghlin *et al*[37] found that nicotine concentrations in bars ranged from 6–82 μg/m³, in a bowling alley ranged from 13–20 μg/m³, and in a bingo hall ranged from 53–60 μg/m³. The largest study of nicotine values in bars, which reported measurements from 49 establishments,[38 39] reported a mean nicotine concentration of 14.4 μg/m³ in bars and bar areas of restaurants. This is consistent with values reported in table 1, especially in light of the fact that measurements in bar areas of restaurants are likely to be lower than in free-standing bars.

If non-US studies are included in the analysis, then the weighted mean nicotine concentration for bars increases from 31.1 μg/m³ to 39.3 μg/m³, and weighted mean nicotine concentration for betting establishments increases from 9.8 μg/m³ to 13.9 μg/m³. The lower values, with only US studies included, are used in subsequent lung cancer mortality risk estimates.

Estimates of excess lung cancer mortality risk

Estimated excess lifetime lung cancer mortality risk caused by workplace secondhand smoke exposure among workers in the 5 B's ranged from 0.0010–0.0041 (table 2). If correct, this

Table 2 Estimates of 40 year working lifetime excess mortality risk from lung cancer associated with secondhand smoke exposure among workers in bowling alleys, billiard halls, betting establishments, bars, and bingo parlours*

Type of workplace	Weighted mean nicotine concentrations (μg/m³) and range†	Lung cancer mortality risk	Lower range of mortality risk	Upper range of mortality risk
Betting establishments	9.8 (8.0–10.7)	0.0013	0.0011	0.0014
Bowling alleys	10.5 (10.1–10.7)	0.0014	0.0013	0.0014
Billiard halls	13.0 (9.8–19.4)	0.0017	0.0013	0.0026
Bars	31.1 (7.4–105.4)	0.0041	0.0010	0.0140
Bingo parlours	76.0 (65.5–81.2)	0.0010‡	0.0009	0.0011

*Mortality risk estimated using method developed by Repace and Lowrey[12] for ambient nicotine values. For bingo workers, 2 hours of exposure twice a week are assumed, compared to a 40 hour work week for all other workers. Note that although the estimates are based on a working life (40 years) of exposure, the excess deaths could occur post-working life.
†Weighted mean nicotine concentrations are from table 1. Range represents range of mean nicotine concentrations from individual studies.
‡Assumes 2 hours of exposure twice a week.

means that between 1.0 4.1 of every 1000 workers in these establishments who works for 40 years will die of lung cancer attributable to their workplace secondhand smoke exposure. All of these mortality risks greatly exceed even the typical de manifestis (a risk level so high that the involuntary hazards are invariably of regulatory concern and the federal government strictly regulates a carcinogen[13]) risk level of 0.0003, or 0.3/1000. Under the highest exposure conditions in bars, we estimate that approximately 14 of every 1000 workers will die from lung cancer attributable to their worksite exposure (assuming 40 years of exposure in that worksite).

Importantly, the lower limit of the range of estimated lifetime excess lung cancer mortality risk for the 5 B's based on the identified studies is between 0.9–1.3/1000, or approximately three to four times higher than the typical de manifestis risk level.

Through our literature search, we identified two previous studies that estimated excess lifetime mortality risk among bar or restaurant workers caused by secondhand smoke exposure. Repace estimated a working excess lifetime mortality risk of 0.03 (three deaths per hundred workers) for Hong Kong restaurant workers[36] and 0.20 (20 deaths per hundred workers) for Irish bar workers.[40] Since Repace included heart disease deaths (at a level 10 times that of lung cancer deaths), his estimates for excess lung cancer mortality risk amount to approximately 0.0027 for Hong Kong restaurant workers and 0.018 for Irish bar workers. The former estimate is entirely consistent with the range of excess mortality estimates presented in this paper (considering that exposure in bars would be expected to be higher than for restaurants); the latter estimate is just slightly higher than our excess mortality estimate for the most heavily contaminated bar in our analysis.

DISCUSSION

To the best of our knowledge, this is the first review of exposure to secondhand smoke among workers in bars, bowling alleys, billiard halls, betting establishments, and bingo parlours. We found that ambient nicotine concentrations in these establishments were 2.4 to 18.5 times higher than in offices and 1.5 to 11.7 times higher than in restaurants. Even in the lowest exposure conditions (the lower limit of the range of mean nicotine concentrations in all identified studies), nicotine concentrations in the 5 B's exceeded those in offices by a factor of 1.8 to 16.0 and exceeded values in restaurants by a factor of 1.1 to 10.1. Thus, despite the high variability in exposure levels due to the small number of studies, the basic conclusion that the 5 B's represent worksites with very high relative occupational levels of secondhand smoke exposure seems to be clear.

The high levels of secondhand smoke exposure in the 5 B's translates into lifetime excess lung cancer risk estimates that exceed the typical de manifestis risk level, even for the lower limit of the range of observed exposures in these establishments. Based on the average exposure conditions, we estimate lifetime excess lung cancer mortality risk of between 1.0–4.1/1000 (compared to the typical de manifestis risk level of 0.3/1000). However, under the highest exposure conditions for any of the 5 B's, workers are exposed to concentrations of nicotine that are about 26 times higher than in offices, resulting in an estimated excess lifetime lung cancer mortality risk of 1.4% (and 47 times the de manifestis risk level).

The data presented here suggest that the focus of clean indoor air policy promotion should shift to include all service workplaces, including not only restaurants, but the 5 B's as well. We found that nicotine concentrations in the 5 B's exceed those in restaurants by a factor of 1.5 to 11.7. Given that Wortley *et al*[31] found waiters and waitresses to have the highest serum cotinine concentrations of any occupational group (data for workers in the 5 B's were not reported separately), this suggests that workers in the 5 B's are actually the occupational groups most heavily exposed to secondhand smoke in the workplace.

An important implication of our findings is that the current pattern of workplace smoking regulations is fostering a disparity in health protection between various types of workers. Data from the US Census suggest that this could translate into a social class disparity in health protection among workers, since the average annual salaries of workers (including both full time and part time employees and not including tip income) in bars ($9661),[42] betting establishments ($19 117),[43] and bowling alleys ($9 325)[43] are much lower than the national average ($32 109)[42] (also including full time and part time employees) for all industries. Although Healthy People 2010 calls for the reduction of secondhand smoke exposure in the workplace,[44] it also calls for the elimination of health disparities between groups on the basis of social class.[45] It may be that extending protection from secondhand smoke exposure to service workers in the 5 B's may help promote not only the Healthy People 2010 goal of reducing workplace secondhand smoke exposure, but also its goal of reducing health disparities.

Study limitations

There are several important limitations of this paper. The primary limitation is that few studies examined exposure to secondhand smoke among workers in the 5 B's, especially bowling alleys, billiard halls, and bingo parlours, for which there were only two identified exposure studies each. Therefore, there is great variability in the estimates of secondhand smoke exposure levels (and consequently, in the lung cancer mortality risk estimates). Our approach was to provide a range of exposure and risk estimates corresponding to the lowest and highest mean nicotine concentrations reported in all of the identified studies for each type of establishment. We suggest that the most appropriate interpretation of the results of our study is not to cite specific exposure and risk levels as being the truth, but to document the qualitative conclusion (supported by even the lowest exposure and risk estimates) that secondhand smoke exposure in the 5 B's exceeds that for most other workplaces, and that the resulting excess lung cancer mortality risk exceeds the level at which carcinogens are typically strictly regulated.

A second limitation is that we most likely were not successful in obtaining all of the studies that would have met our inclusion criteria. We reason that we were probably more successful in obtaining published articles than unpublished ones, given our use of database search facilities with extensive journal coverage. It is important to note, however, that unlike typical publication bias, where negative studies are less likely to be published, there really is no "negative" result when it comes to reporting nicotine concentrations in workplaces. Thus, even though we may not have been exhaustive in our inclusion of studies, we have no reason to believe that our sample is not representative of all studies.

A third important limitation is that although we estimated lung cancer mortality risks, the number of heart disease deaths attributable to secondhand smoke exposure far exceeds the number of lung cancer deaths. Our risk estimates therefore greatly underestimate the total mortality burden attributable to secondhand smoke exposure in the 5 B's. Our estimates may in fact underestimate the total disease burden by a factor of 10.[34 36]

Finally, our mortality estimates are based on the assumption of a 40 year working period. There may be reason to believe that bar workers, for example, represent a more transient occupational group than other types of workers and may be less likely to experience exposure over many years. Nevertheless, it is important to point out that while the actual mortality risks may therefore be lower, the assessment of the

What this paper adds

While levels of exposure to secondhand smoke among restaurant workers have been reviewed, we are not aware of any published review of exposure among workers in bars, bowling alleys, billiard halls, betting establishments, and bingo parlours (the "5 B's"). Since workers in these establishments are typically excluded from workplace smoking regulations (which usually cover office workplaces and sometimes cover restaurants), it is critical to understand and evaluate their secondhand smoke exposure and associated health risks.

From this review, we now know that workers in these five types of establishments have extremely high levels of occupational exposure to secondhand smoke. We have quantified the average exposure levels and estimated the resulting lifetime lung cancer mortality risk among these workers, and have provided a range of exposure and mortality estimates corresponding to the range of nicotine concentrations measured in these establishments. While public health advocates must continue to seek protection of the public from secondhand smoke exposure in office workplaces and restaurants, they must devote special attention to protecting workers in these five service workplaces.

level of occupational risk for these workers should be based on whether it would be safe for them to work under such conditions for a working lifetime (which many bar workers invariably do). Thus, we believe that presenting working lifetime mortality estimates is the most useful and appropriate measure to judge the occupational health risk. It should be noted that because the risk model is linear, one can derive risk estimates for shorter working periods directly from the estimates in table 2.

Conclusion

In spite of these limitations, this review of secondhand smoke exposure in bars, bowling alleys, billiard halls, betting establishments, and bingo parlours suggests that workers in these establishments have the highest occupational levels of exposure to secondhand smoke, resulting in unacceptable levels of excess mortality risk. Unfortunately, these tend to be the workers most often excluded from workplace smoking regulations. Perhaps it is now time for a fourth wave of clean indoor air policy promotion, in which public health advocates insist that workers in the 5 B's be extended the protection that the majority[1 2] of other workers benefit from.

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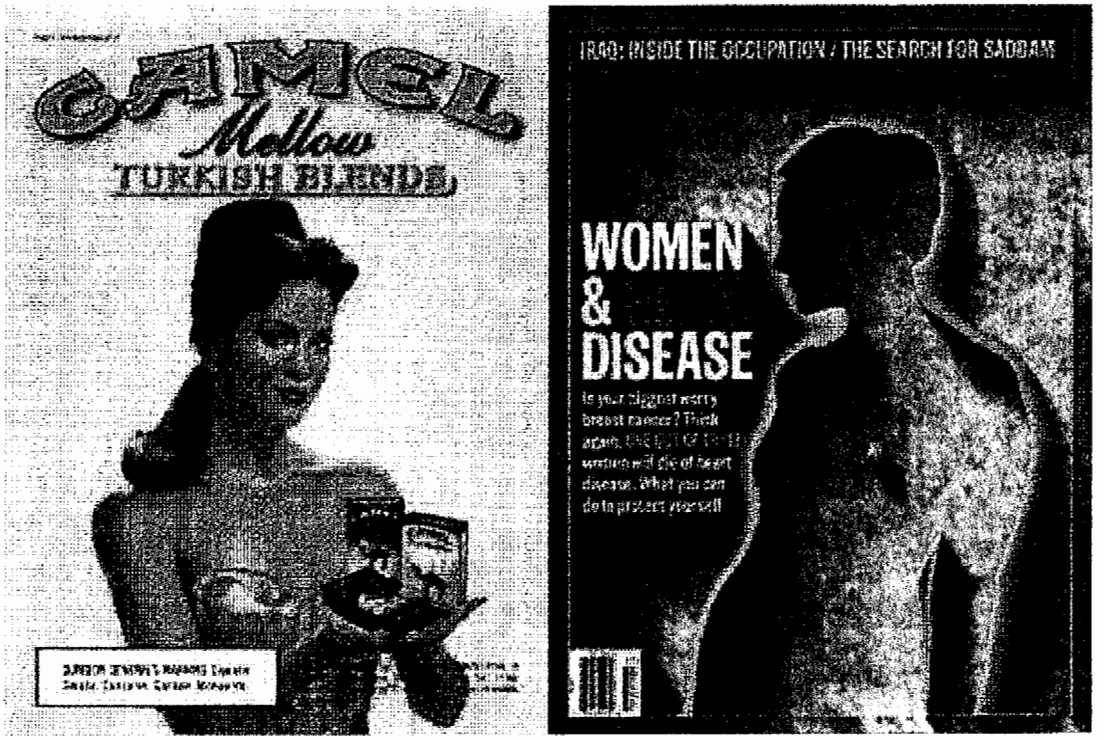

"Mellow" heart disease? *Time* magazine runs a cover story on women and heart disease, explaining "What you can do to protect yourself!" The story is well written, providing several reminders that women need to "walk a mile" away from a Camel, or any other cigarette. But the back cover tells a different story. A picture destroying the value of many thousand words. Submitted by Ron Davis.

Date 8
4-5-05
HB643

ANR AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

SECONDHAND SMOKE: WORKER HEALTH

December 2004

HOSPITALITY WORKERS

Hospitality worker health improves dramatically with the passage of smokefree laws.

- Food service workers have a 50% greater risk of dying from lung cancer than the general population, in part, because of secondhand smoke exposure in the workplace.[1,2]

- Average cotinine levels (metabolized nicotine) of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect.[3]

- In New York state, the number of hospitality workers who reportedly experienced irritation of the eye, nose, and throat declined by 62%, 34%, and 45%, respectively. Before the state law went into effect, 59% of hospitality workers reported respiratory symptoms, such as morning cough, shortness of breath, or bringing up phlegm. After the smokefree law took effect, the number of workers who reportedly experienced morning cough dropped by 46%.[4]

- Hospitality venues located in smokefree cities have, on average, 84% less indoor air pollution than restaurants, bars, pool halls, bingo parlors, and bowling alleys in cities that do not have smokefree protection. Smokefree bars and restaurants (with no smoking in attached bars) have 90% less indoor air pollution; bowling alley, bingo parlor, and pool hall indoor air pollution decreases by 76%; and restaurants smoking in with attached bars have 58% less indoor air pollution.[5]

- Although 76% of U.S. white-collar workers are covered by smokefree laws or policies, including 90% of teachers, just 43% of the country's 6.6 million food preparation and service workers, including bartenders, benefit from this level of protection. Workers in food preparation and service occupations are significantly less protected than others.[6]

- Restaurant workers are exposed to levels of secondhand smoke that are approximately 1.6 to 2.0 times higher than those to which office workers are exposed on the job. Workers in the "5 B's"(bars, bowling alleys, billiard halls, betting establishments, and bingo parlors) have secondhand smoke exposure levels that are 2.4 to 18.5 times higher than those in offices, and 1.5 to 11.7 times higher than in restaurants — a risk level 47 times higher than the federal government's defined level for a carcinogen.[7,8]

- The toxins in secondhand smoke cause respiratory problems, such as wheezing, asthma attacks, dyspnea (shortness of breath), and excessive coughing long after exposure. Before California bars went smokefree in 1998, 74% of San Francisco bartenders reported experiencing respiratory symptoms. Within two months of bars going smokefree, these complaints dropped by almost 60%.[9]

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BLUE-COLLAR WORKERS

- In 2002, the International Labor Organization (ILO) reported that cancer was the largest killer in the workplace, accounting for approximately 640,000 workplace-related deaths per year globally. ILO stated that secondhand smoke in the workplace is estimated to cause 2.8 percent of all workplace cancer.[10]

- Cadmium, benzene, lead, and arsenic are just a few of the over 4,000 hazardous chemical components of secondhand smoke that are also toxins common to blue-collar workplaces. Synergistically, cigarette smoke and workplace toxins can multiply the risk of getting lung cancer by as much as 53 times in blue-collar workers.[11]

- Blue-collar workers protected by U.S. smokefree workplace policies increased substantially -- 28% in 1993 to 52% in 1999—but continue to lag significantly behind white-collar workers, of whom 76% are protected from secondhand smoke in the workplace.[12]

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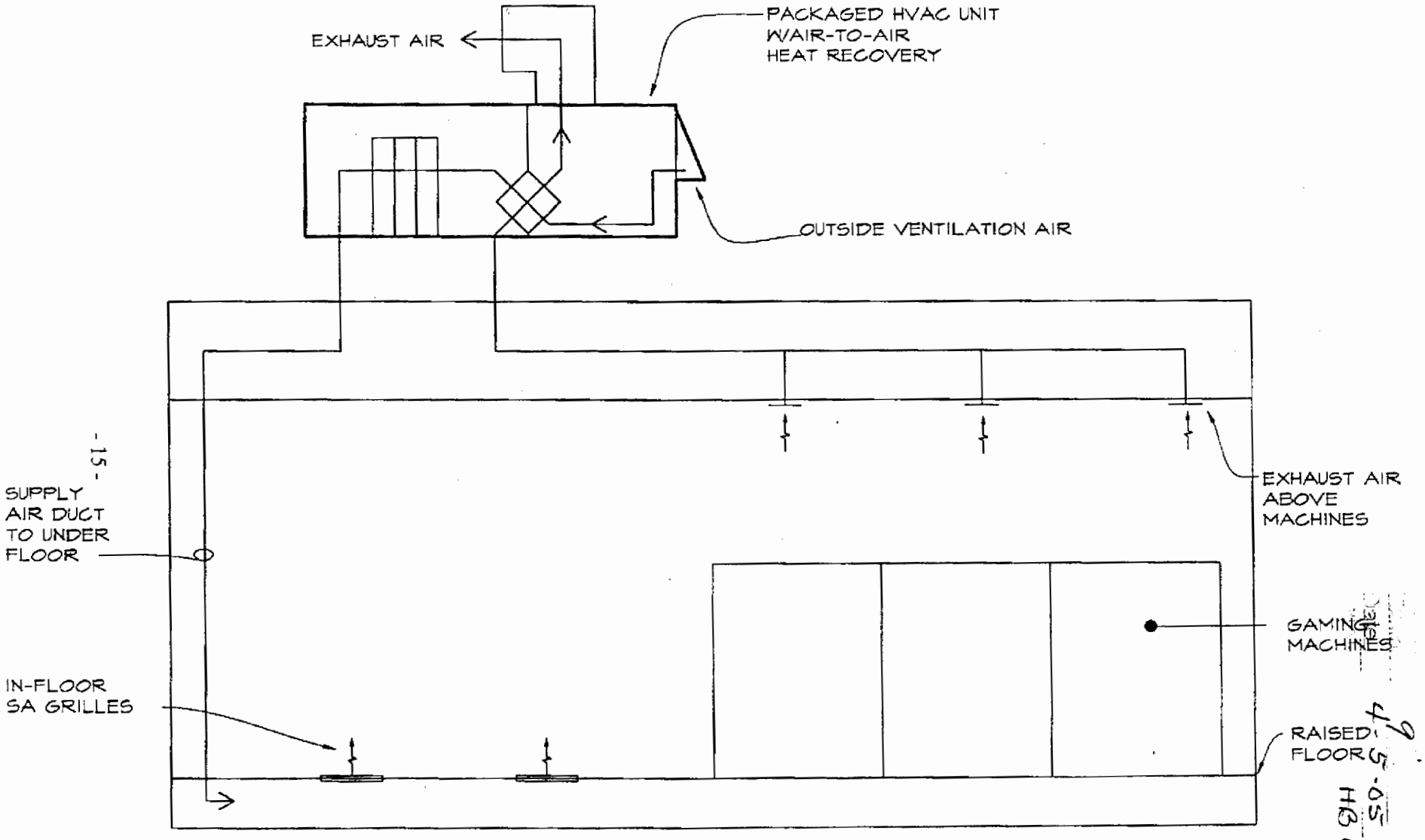

FIGURE 6: NEW CASINO HVAC SCHEMATIC

Exhibit 9
5-05
HB 643

Add the following new Section:

6.1.3.5 Ventilation in Smoking Areas. Smoking areas shall have more ventilation and/or air cleaning than comparable no-smoking areas. Specific ventilation rate requirements cannot be determined until cognizant authorities determine the concentration of smoke that achieves an acceptable level of risk. Air from smoking areas shall not be recirculated or transferred to no-smoking areas.

Add the following new Informative Appendix:

(This appendix is not part of this standard. It is merely informative and does not contain requirements necessary for conformance to the standard. It has not been processed according to the ANSI requirements for a standard and may contain material that has not been subject to public review or a consensus process.)

APPENDIX I

GUIDELINES FOR VENTILATION IN SMOKING-PERMITTED AREAS

I-1. DEFINITIONS

acceptable perceived indoor air quality: air in an occupied space toward which a substantial majority of occupants may reasonably be expected to express no dissatisfaction with respect to odor and sensory irritation.

adapted person: person who has occupied a space for a sufficient period of time to become adapted to the odors in a space.[1] Such a person is also referred to as an "occupant."

smoking lounge: an area in which smoking is a primary, rather than incidental, activity of the occupants.

unadapted person: a person entering a space from another area with acceptable perceived indoor air quality whose sensory perception has yet to become desensitized to some air constituents (such as ETS) in the space. Also referred to as a "visitor."

environmental tobacco smoke (ETS): the aged and diluted combination of both side-stream smoke (smoke from the lit end of a cigarette or other tobacco product) and exhaled mainstream smoke (smoke that is exhaled by a smoker).[2] ETS is commonly referred to as second hand smoke.

ETS-free area: an area where no smoking occurs and that is separated from ETS areas according to the requirements in Section 5 of this standard. Thus, a no-smoking area is not necessarily an ETS-free area.

1 While adaptation to ETS odors may increase over time, the response to the irritant characteristics of ETS may remain the same or even increase.

ETS area: spaces where smoking is permitted, as well as those not separated from spaces where smoking is permitted in accord with the requirements in Section 5 of this standard.

I-2. PURPOSE, SCOPE, AND APPLICABILITY

The purpose of this appendix is to present design guidance that can improve perception (satisfaction with respect to odor and sensory irritation) in the presence of ETS. The method in this appendix allows the designer to take into account the rate of smoking, fraction of smokers, and density of occupancy. The guidance presented in this appendix is not intended to replace engineering experience and judgement. Engineering judgement may be used in lieu of the guidance presented in this appendix.

I-3. GENERAL

I-3.1 Directional airflow should be provided in order to achieve good ETS removal effectiveness. For example, supply and transfer air outlets should not be located where smokers are expected, and exhaust and return air inlets should be located where smokers are expected.

I-3.2 Air from ETS areas should not be recirculated or transferred to ETS-free areas. This may be a requirement of the latest version of ASHRAE Standard 62, the building code, or other codes and standards.

I-3.3 All calculations and design assumptions should be documented and provided with the rest of the design documentation.

I-4. EQUATION METHOD

A space where smoking occurs requires more ventilation than the minimum quantity that could achieve acceptable perceived indoor air quality in the same space without smoking. The method described in Sections I-5 to I-7 may be used to determine the extra ventilation. Once the extra air for ETS (V) is determined, it should be added to the ventilation rate for the space without smoking, in accordance with the latest version of ASHRAE Standard 62, to determine the total ventilation.

2 The composition of ETS varies depending on factors including temporal and spatial proximity to the side-stream plume; contact with duct, room, filter, and other adsorption surfaces and the characteristics of those surfaces; and the characteristics of the air into which ETS enters, including its movement, temperature, humidity, and the concentration and distribution of particles. Because of these features, there is no standard distribution of the large number of gaseous and condensed-phase species contained in ETS.

p. 3, 4, & 5 excerpted from ASHRAE ventilation standard.

I-5. CALCULATION OF AIRFLOW

The amount of ventilation air in an ETS area with smoking is equal to the amount in a comparable ETS-free area, plus the amount V determined by the following expression:

$$V = DSD * VA * A / 60*E \quad \text{(I-1a) (IP)}$$

$$V = DSD * VA * A / 3.6*E \quad \text{(I-1b) (SI)}$$

where

V is the recommended extra flow rate of ventilation air required by smoking in cfm [L/s],

DSD is the design smoking density, or the estimated number of cigarettes smoked per hour per unit area in the space,

VA is the volume of ventilation air per cigarette for the room being designed in ft^3/cig [m^3/cig] (see Equation I-2 or Table I-1),

A is the occupiable floor area in ft^2 [m^2], and

E is the contaminant removal effectiveness. For a fully mixed condition, use E=1. For displacement ventilation systems, E may be greater than 1. When supply air "short circuits" to a return, E will be less than 1. (For additional discussion, refer to *2001 Fundamentals*, p. 26.4,[11] and the spring 2000 edition of ASHRAE's *IAQ Applications*.[12])

I-6. VENTILATION CRITERIA

I-6.1 Volume of Ventilation Air per Cigarette (VA) for Different Occupants. *VA* is the volume of outdoor or cleaned, recirculated air necessary to dilute ETS so that it is perceived as acceptable. Table I-1 specifies the required extra volume of ventilation air for four occupant types. A cigar may be considered equal to about four cigarettes.

TABLE I-1a
Volume of Ventilation Air per Cigarette (VA) (IP Units)

	Unadapted [ft^3/cig]	Adapted [ft^3/cig]
Nonsmokers (VAns)	5600	3900
Smokers (VAsm)	1400	1100

TABLE I-1b
Volume of Ventilation Air per Cigarette (VA) (SI Units)

	Unadapted [m^3/cig]	Adapted [m^3/cig]
Nonsmokers (VAns)	160	110
Smokers (VAsm)	40	30

Note that the above data are based upon chamber studies from Cain, Leaderer, Isseroff et al.[13] *using subjects who volunteered to expose themselves to ETS. Some individuals that are involuntarily exposed to ETS may be less likely to find ETS exposure acceptable. It is reasonable to expect that average populations at the time of publication of this appendix will require greater volumes of ventilation air than given in Tables I-1a and I-1b.*

The data above also assume a well-mixed condition. Therefore, the ventilation rates in Tables I-1a and I-1b may not provide acceptable perceived air quality in the proximity of a smoker. The rates also do not take into account the sink and source effects of surfaces.

Subjects in the above studies were in laboratory spaces, focusing only on odors. In many occupied spaces such as bars, restaurants, and casinos, they may be much less sensitive to ETS, and acceptability may result from lower dilution volumes.

These chamber studies were performed on healthy adult volunteers and therefore do not apply to other groups, such as children and those with lung disease.

I-6.2 Volume of Ventilation Air for Mixed Occupancies. The volume of ventilation air may be determined based on acceptability for smokers, nonsmokers, or a mixture, in accordance with the design objectives. If the space is being designed exclusively for smokers or nonsmokers, use the appropriate row of Table I-1. For a mixture of smokers and nonsmokers, the following formula may be used:

$$VA = SM*VAsm + (1-SM)*VAns, \quad \text{(I-2)}$$

where VA is the volume of ventilation air per cigarette in ft^3/cig [m^3/cig] for the room being designed, SM is the proportion of occupants who are smokers, and $VAsm$ and $VAns$ are the respective volumes of ventilation air from Table I-1.

I-7. DESIGN SMOKING DENSITY

I-7.1 Design Smoking Density (DSD). The design smoking density is the estimated number of cigarettes smoked per hour per unit area in the space.

I-7.2 The DSD is the product of the fraction of smokers, rate of smoking, and number of smokers:

$$DSD = SM*SR*EMO/1000 \quad \text{(I-3a) (IP)}$$

$$DSD = SM*SR*EMO/100 \quad \text{(I-3b) (SI)}$$

where

DSD is the design smoking density in cig/h-ft^2 [cig/h-m^2],

SM is the proportion of occupants who are smokers,

SR is the smoking rate of the smokers [cigarettes/smoker-h], and

EMO is the estimated maximum occupancy in persons/1000 ft^2 [persons/100 m^2].

I-7.3 When site-specific information is available for SM, SR, and EMO, it should be used. When it is not, use EMO from Table 2 of the latest edition of Standard 62 and SM and SR from Table I-2.

I-8. SOURCE OF VENTILATION AIR

I-8.1 Extra ventilation air for smoking may be provided by outdoor air, cleaned recirculated air, or a combination of the two. This air may be supplied to the smoking-permitted ETS area indirectly by overventilation of another area with the rec-

cont'd

ommended amount of additional outdoor air and transferring this additional outdoor air from the other area to the smoking-permitted ETS area. While it may be acceptable to use transfer air from another area that is not overventilated, care must be exercised in that the use of poor or marginal quality transfer air may result in decreased acceptance levels, which may be as low as 60% when the transfer air is already fully vitiated. The general aim both in smoking-permitted ETS areas and ETS-free areas is to reach a perceived indoor air quality with an 80% acceptance level. The lower acceptance may be tolerated in smoking lounges and other occupancies due to the short occupancy time and other factors.

Recirculated air from ETS areas may be used, provided the odorants and irritants have been filtered in accord with the provisions of Section I-8.2.

I-8.2 The amount of cleaned, recirculated air that may be counted toward the volume of extra ventilation air required by smoking is given below:

$$Vf = Ef\,Vr \qquad (I\text{-}4)$$

where

Vf is the volume flow rate of qualified cleaned recirculated air in cfm [L/s],

Ef is the demonstrated efficiency for removal of both gas and particulate phase ETS components that impact perceived indoor air quality, and

Vr is the volume flow rate of recirculated air being passed through the filter in cfm [L/s].

TABLE I-2
Range of Parameters in Typical Smoking Occupancies

Occupancy Type	SM [Fraction]	SR [Cig/ Smoker-h]
Smoking Lounges	1.00	3-6
Bars, Cocktail Lounges, Casinos, Lunchrooms	0.25-0.50	1-2
All Others (from U.S. Average)	0.20-0.25	0.6

TABLE I-3a
Sample Calculations Using Equation Method for Determining Recommended Extra Outdoor Ventilation Rates in Smoking-Permitted Areas in Various Facilities (IP Units)

	Proportion of Smokers, SM	Smoking Rate, SR	Outdoor Air Requirements			
			Extra Ventilation Rate		Total Ventilation Rate	
Smoking-Permitted Application		Cigarette/ smoker-h	cfm/person (unadapted)	cfm/person (adapted)	cfm/person (unadapted)	cfm/person (adapted)
Smoking lounge	1	3	--	55	--	70
Heavy smoking lounge	1	6	--	110	--	125
Bar, cocktail lounge	0.25	1	19	13	39	33
Heavy smoking bar, cocktail lounge	0.5	2	--	42	--	62
Dining room 1	0.2	0.6	10	7	30	27
Dining room 2	0.5	0.6	18	13	38	33
Gambling casino 1	0.25	1.5	28	20	48	40
Gambling casino 2	0.2	1.5	24	17	44	37
Conference room	0.2	1.1	17	12	32	27
Game arcade	0.2	1.1	17	12	42	37
Bowling alley (seating area)	0.2	1.5	24	17	49	42
Office	0.2	0.6	10	7	30	27

Note: The base ventilation rate for an ETS-free area comparable to a smoking lounge is 15 cfm/person.

Executive Summary

1. OSHA-ACGIH Ventilation Workshop Summary

A panel of 14 experts on ventilation engineering and ventilation practices in the hospitality industry was charged with determining technically and economically feasible engineering controls for ETS in restaurants, bars, and casinos, assuming that total elimination of ETS was not an option. The panel recognized that there was a lack of information on typical ETS exposure levels in such venues, as well as a lack of recognized standards for acceptable exposure. Panelists concluded that well-mixed dilution ventilation, the overwhelming majority of current installations, was unsatisfactory for controlling worker exposure to ETS in hospitality venues. Local area exhaust ventilation, smokeless ashtrays, air cleaning, and displacement ventilation were identified as potentially more effective. Of these, displacement ventilation was viewed as the most promising, with estimated 90% reductions under the most favorable conditions. These estimates were based on professional judgment rather than on measured data. Moreover, the panel raised several concerns about displacement technology, including lack of familiarity by many ventilation engineers, difficulty with retrofitting existing installations, and potential aesthetic problems.

Ventilated ashtrays as currently available did not appear to be effective, although panelists felt the technology could be made 40% to 50% efficient, provided smokers could be persuaded to use them, a significant potential problem in areas where foreign tourists are frequent customers. These conclusions were professional judgments as opposed to data-based analysis. Although air filters are capable of high capture efficiencies, they also require high airflow to be effective, and needed regular effective maintenance to remain effective. Costs are a major consideration in the restaurant industry, which limits the implementation of high technology solutions such as 100% outside air 1-pass systems. Costs are not a limiting factor in the casino industry for the large casinos, although they are for the small ones. Large fluctuations (e.g., factors of 3) in the smoking population of these venues may occur. A further significant problem is that some building codes do not require that the ventilation system actually be operated, especially in the small non-chain establishments.

In brief, The OSHA/ACGIH workshop concluded that presently available ventilation technology (well-mixed dilution ventilation) was unsatisfactory for controlling worker exposure to ETS. It also concluded that air cleaning was similarly problematic. Of proposed new technology, displacement ventilation was

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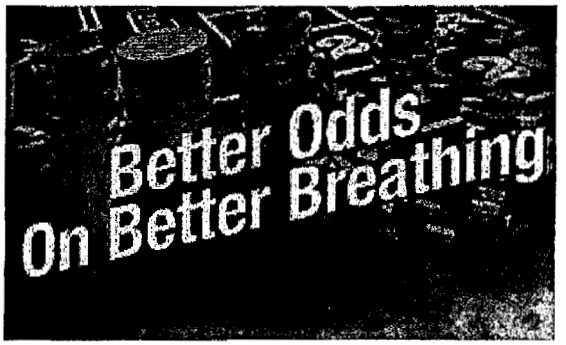

Better Odds On Better Breathing

By **Joanna Turpin**

--Posted: 04/30/2004

The Turning Stone Casino Resort in Verona, NY, operated by the Oneida Indian Nation, had a problem with environmental tobacco smoke (ETS). During peak hours as gamblers filled up the gaming floor, a blue haze would cover occupants, and the existing ventilation system didn't do enough to clear the air.

Drastic measures were needed to solve the ETS problem. Interestingly enough, smoking is prohibited in public buildings throughout New York, but visitors to the casino are permitted to smoke, because the facility is located on sovereign land. The Oneida Indian Nation, while wanting to permit smoking, felt strongly about eliminating as much ETS as possible. To achieve that, they were even willing to tear out all the existing mechanical systems in order to improve the air quality within the casino.

And that's just about what happened. A two-phase construction project included demolition of existing mechanical systems and installation of new ones. The first phase of the construction, which was completed in August 2002, consisted of an 80,000-sq-

ft expansion of the gaming room. The second phase, which was completed in January 2003, involved a complete renovation of the existing 70,000-sq-ft of gaming floor.

Now 18 months later, a new underfloor air system has helped eliminate the ETS problem, and patrons (and owners) can breathe easy.

Displacing Traditional Systems

Installing the underfloor air system in the existing gaming area was a challenge because trenches had to be dug in the existing floor slabs in order to accommodate the system.

Prior to the renovation, the casino used seven air cooled chillers and a traditional overhead air distribution system that employed heat recovery. Even with 100% outside air entering the building, a smoke haze continued to fill the casino. Engineering firm Sacks and Associates, (Syracuse, NY) was brought on board to see what it could do to correct the problem with ETS.

Jerry Cowden, an engineer with Sacks and Associates, said, "We put a lot of thought into the best way to get rid of the smoke, and we came up with the displacement air system, or underfloor air system. We supplied the conditioned outside air down low and exhausted it up high."

Cowden said the firm considered other types of air distribution systems as well, including those used in hospital operating rooms. There, air is often supplied in the middle of the room and exhausted low down on the sides. But the engineers didn't think it would be as effective as pushing the smoke up and exhausting it out the top of the building.

As a result of their research, York's FlexSys™ underfloor air system was installed in the expanded gaming room. The VAV boxes in the underfloor air system modulate to meet the needs of a particular space; subsequently, the speed of the heat recovery unit fans changes in order to meet the static pressure requirement in the floor plenum.

Rick Lopez, owner and sales engineer, Pro Air Plus, Inc., (Syracuse, NY) explained that with an underfloor air system, 100% fresh air is introduced at the floor and all the polluted air is exhausted at the ceiling. "If you go into the gaming area right now and watch people sitting at the slot machines with cigarettes in their hands, you can watch the cigarette smoke move directly towards the ceiling and be carried away by the return air system."

Lopez noted that one of the issues they had to be careful about when installing the new underfloor system was air leakage. The raised floor creates a pressurized supply air plenum, so a good seal is needed where the raised floor is connected to the perimeter walls, interior walls, and columns.

"You have to make sure that partitions and columns go all the way to the subfloor. Taking measures to adequately seal penetrations is very important. Otherwise you see things like the fresh air in the pressurized raised floor going up the column and coming out the thermostat, resulting in poor temperature control," said Lopez.

New Air-Handling System Needed

Phase I also included the removal of the casino's air-handling equipment, which contained heat wheels. "The wheels were all getting contaminated from the smoke, so the decision was made to utilize air-to-air plate-type heat exchangers. There's no cross contamination between the two airstreams, so it keeps the heat exchangers clean," said Cowden.

Twenty two brand new, 12,000 cfm, 100% outside air heat recovery units manufactured by Venmar were installed. The units use 95% filters, and a water wash system on the exhaust air cleans all the ETS tar and film from the plate heat exchangers.

The Venmar units are outfitted with cooling coils and hot water coils, along with gas-fired Nortec humidifiers. The humidifiers are necessary, because Syracuse experiences harsh winters, with indoor rh levels down around 20%. With all the fresh air being brought into the casino, humidity must be added back in for occupant comfort.

Installing the new heat recovery equipment was a challenge, because it turned out the units were heavier than anticipated. A helicopter was hired to place the equipment on the roof. However, the units were too heavy, and each unit had to be disassembled into sections, hoisted to the roof by helicopter, then reassembled.

Energy Efficient Changes

The six and 10-year-old air cooled chillers didn't have adequate capacity to cool the new space, so a new 1,000-ton water-cooled York chiller was installed for the addition. The original goal was for the air cooled and water cooled chillers to run together to

meet the expanded needs of the casino. However, in a short period of time, the casino grew from a 3,000-ton connected load to a 6,000-ton connected load.

More capacity will also be needed in the near future, because the casino is in the process of building a 20-story hotel, 300-room lodge, an indoor garden area with waterfalls and plants, and a new showroom. With these new additions scheduled to open by fall 2005, it was decided to abandon the air cooled chillers in favor of a central station chilled water plant.

Pockets of natural gas were also found on the reservation, and a cogeneration plant was subsequently built. The original water cooled York chiller was moved over to the power plant, and two 1,500-ton Trane two-stage absorption chillers were also installed, along with two Trane 1,000-ton centrifugal chillers.

The casino will use the waste steam off the electricity-producing gas turbine for the absorption chillers to produce approximately 3,000 tons of free cooling during the summer months. In the winter, a plate-and-frame heat exchanger will be used for the base load.

Bill Hollenbeck, senior facilities supervisor, Turning Stone Casino, said that even though it cost a lot to purchase all the new chillers, they're already seeing a big difference in their operating costs. "We get more for our money with the power plant. The air cooled chillers were only 1.3 kW/ton, but the York chiller is 0.3 kW/ton. That's because it's got a 10% turndown on variable speed, so we can run it way down low."

The Venmar units also have VSDs on the supply and exhaust fans, so Hollenbeck can lower the power consumption on all 22 of the units. "We can run a low static pressure on the duct, run the fans down, and get the amperage down. If you look at the whole picture, you can see how much energy we're saving. Say a motor that used to run 70 amps, we can run it under 20 now. The power savings is phenomenal."

Fourteen new high-efficiency, 2,000,000-Btu gas-fired modulating boilers were also installed, along with variable-speed pumping systems for energy conservation. The casino was already using an Alerton BAS, so it was expanded into the addition. The existing BAS was also upgraded for the new chilled water plant, heating plant, and additional renovations.

Renovation a Challenge

Turning Stone Casino added 80,000-sq-ft of gaming area in August 2002. An underfloor air system helped eliminate the smoke that settled over the space in the past.

Once the addition was finished, it was time to turn everyone's attention to the existing gaming space. The entire building was gutted, which made it a little easier to install the new mechanical systems. But there were still challenges.

As Cowden noted, the biggest hurdle during the renovation was to fit all the equipment into an existing space and still be able to get rid of the ETS as effectively as the systems did in the addition. "In the addition we could do whatever we wanted. For example, we could support our equipment on the roof, because it was a brand new building, and we could design the structure to support everything. In the existing building, we had to reinforce the roof and build platforms and that was a big challenge."

It was also challenging to install the underfloor air system in the existing area, because trenches had to be dug in the existing floor slabs to accommodate this system. Hollenbeck said that it also took time to lag in all the floor supports, construct the raised floor, then put in the units. "We had to install access panels carefully, because we only have 32 or 34 in. to do our work in. It was time consuming, but in the long run, it's paying for itself."

Decorative fake columns were installed to distribute the air at floor level. Heavier gauge floor platforms and panels had to be used to allow casino personnel to drive forklifts on the gaming floor to service lighting fixtures and other equipment.

Although the primary purpose of the underfloor plenum was for air distribution, once the space was created, everyone wanted to take advantage of it, said Cowden. As a result, the plenum was also utilized for power, data, and control wiring.

Now that all the work is finished, everyone agrees that the air is much clearer with the underfloor air system in place. "We have floor space sensors that modulate the dampers, and everything's running fine," said Hollenbeck. "I don't know how long the underfloor system has been available, but it's something that's really helped us out considerably." **ES**

ABOUT THE AUTHOR:
Turpin has been with Business News Publishing since 1991, first heading up the company's technical book division before moving over to write for *Engineered Systems* in 1996. She graduated from the University of Washington and worked on her master's degree in technical communication at Eastern Michigan University. As contributing editor, Turpin writes on a variety of HVACR topics from her sunny location in Phoenix. E-mail her at Joanna Turpin.

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Montana State Legislature
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SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 374, HB 643

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NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
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Mike Lunghio	538-4094	Coin operators	HB643		
Rick DeMarinis	495-9400	CTIA	HB643	✓	
Joan Hayes	453-9567	CCPOA	643	✓	
Mike Barnett	443 2195	self, (poet, etc.) informally artists, others	374		✓
Jami McCall	670-3084	DBC, MCI	643	✓	
Richard Sargent	442-3300	Self	643	informational	
Joan Miles	457-8910	Lewis + Clark Health Dept + Health Officers Group	HB643	✓	
Kristin Page Nei	360 8752	American Cancer Society	HB643		✓
Joe Mazurek	457-2000	" " "	HB643		✓
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DATE April 5, 2005

SENATE COMMITTEE ON Judiciary

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Betty Beverly	443-5341	MSCA	HB643 ~~HB374~~	X	
Mary McCue	443-2061	MT Dental Assn	HB643	X	
Cliff Christian	495-8902	Am Heart Assn	HB643	X	
Dick Paulsen	442-6556	Am. Lung Assn Mt. Pacific	HB643	X	
Bill Muhs	587-3672	MADD	HB374	X	
Tim Burton	4147-8401	City of Helena	HB643	X	
Diane Jenson	458-5511	S.D 42	HB643		X
Joe McKinney	452-0324	Self	HB643		X
Brenda Carpenter-Wiscomb	899-5659	Mt Coin Machine Operator	HB643		X
Carl McOmber	961-5245	M.T.A.	HB643	X	
Pat Melby	442-7450	Mt Med Assn	HB374 HB643	✓	
M CESTARO	439-1111	RIVIL/VIPP			X

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SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 643** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Mike Wheat

- END -

Committee Vote:
Yes 9, No 3.

731033SC.ssc

AN ACT PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; ESTABLISHING PENALTIES; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA; AND PROVIDING A TERMINATION DATE.

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-1-220, MCA, is amended to read:

"20-1-220. Use of tobacco product in public school building or on public school property prohibited. (1) An individual may not use a tobacco product in a public school building or on public school property ~~during school hours~~.

(2) Subsection (1) does not apply to the use of a tobacco product:

~~(a)~~ in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

~~(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;~~

~~(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or~~

~~(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district.~~

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) A violation of this section is subject to the penalties provided in [section 8].

~~(4)~~(5) For the purposes of this section, the following definitions apply:

(a) "Public school building or public school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

Section 2. Section 50-40-102, MCA, is amended to read:

"50-40-102. Intent -- purpose. ~~The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.~~ The legislature finds and declares that the purposes of this part are as follows:

(1) to protect the public health and welfare by prohibiting smoking in public places and places of employment;

(2) to recognize the right of nonsmokers to breathe smoke-free air; and

(3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke."

Section 3. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.

~~(1)~~(2) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)~~(3) "Enclosed public place" means an indoor area, room, or vehicle ~~used by~~ that the general public is allowed to enter or ~~serving~~ that serves as a place of work, including but not limited to the following:

(a) restaurants~~;~~;

(b) stores~~;~~;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

~~educational or~~

(e) health care facilities~~;~~;

(f) auditoriums, arenas, and assembly facilities; ~~and~~

(g) meeting rooms open to the public;

(h) bars;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

~~(3)~~(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60%

of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

~~(4)~~(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

~~(5)~~(7) "Place of work" means an enclosed room where ~~more than~~ one ~~employee~~ or more individuals ~~works~~ work.

~~(6)~~(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

~~(7) "Smoking area" means a designated area in which smoking is permitted.~~"

Section 4. Section 50-40-104, MCA, is amended to read:

"50-40-104. ~~Designation or reservation of smoking or nonsmoking areas -- notice~~ Smoking in enclosed public places prohibited -- notice to public -- places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

~~(1) The proprietor or manager of an enclosed public place shall:~~

~~(a) designate nonsmoking areas with easily readable signs;~~

~~(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;~~

~~(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or~~

~~(d) designate and reserve the entire area as a nonsmoking area.~~

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, ~~whether or not areas within the establishment have been reserved for nonsmokers~~ that smoking in the enclosed public place is prohibited.

~~(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.~~

~~(4)~~(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.

(5) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;

(b) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

(c) a private motor vehicle;

(d) school property in which smoking is allowed pursuant to the exception in 20-1-220;

(e) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and

(f) a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

Section 5. Section 50-40-108, MCA, is amended to read:

"50-40-108. Enforcement. The provisions of this part ~~shall~~ must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department."

Section 6. Section 50-40-201, MCA, is amended to read:

"50-40-201. ~~Reservation of smoking and nonsmoking areas in work areas in local~~ Local government buildings -- smoking prohibited. (1) In ~~offices and work areas in~~ all parts of buildings maintained by a political subdivision, ~~except a school or community college facility designated as tobacco-free by the board~~

~~of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.~~

~~(2) The governing body of a political subdivision may designate any building maintained by it as smoke-free~~ smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions ~~authorized by~~ contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

Section 7. Part preemptive of stricter ordinance. The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation.

Section 8. Penalties. (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than $25 or more than $100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

(a) a warning for the first violation;

(b) a written reprimand for a second violation; and

(c) within any 3-year period, a fine of:

(i) $100 for a third violation;

(ii) $200 for a fourth violation; and

(iii) $500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a) or (1)(c).

Section 9. Rulemaking required. The department shall adopt rules to implement this part.

Section 10. Repealer. Sections 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, and 50-40-207, MCA, are repealed.

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 12. Codification instruction. [Sections 7 through 9] are intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to [sections 7 through 9].

Section 13. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 14. Termination. [Section 7] terminates September 30, 2009.

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